119-361

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

~~No. 365.~~ 62

FANNY D. WYLIE, PLAINTIFF IN ERROR,

vs.

THE NORTHAMPTON NATIONAL BANK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 26, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 305.

FANNY D. WYLIE, PLAINTIFF IN ERROR,

vs.

THE NORTHAMPTON NATIONAL BANK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Fanny D. Wylie, plaintiff, and The Northampton National Bank, defendant, a manifest error hath happened, to the great damage of the said Fannie D. Wylie, plaintiff, as is said and as appears by her complaint, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand eight hundred and eighty-three and of the Independence of the United States the one hundred and seventh.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH,

Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Writ allowed June 19th, 1883.

ADDISON BROWN.

2 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 202 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Fannie D. Wylie, plaintiff in error, against The Northampton National Bank, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this twentieth day of September, in the year of our Lord one thousand eight hundred and

eighty three and of the Independence of the United States the one hundred and eighth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH.

[Endorsed:] United States Supreme Court. Fanny D. Wylie *vs.* The Northampton National Bank. Writ of error. Holmes & Adams, solicitors for plaintiff, 35 Wall St., N. Y. city, N. Y. N. Y. city, June 19, 1883. Due notice of service of a copy of the within writ of error is hereby admitted. Pechham & Tyler, defendant's solicitors. U. S. circuit court. Filed Jun. 19, 1883. Timothy Griffith, clerk.

3 The people of the State of New York, by the Grace of God free and independent, to all whom these presents shall come, Greeting:

[Seal of the Superior Court of the City of New York.]

Know ye that we, having inspected the files of the superior court of the city of New York, do find there remaining on file a certain record and the proceedings (a copy of the whole of which said record and of the proceedings is hereto annexed) in an action wherein Fanny D. Wylie is plaintiff and The Northampton National Bank defendant, in the words and figures following, to wit:

4 *Summons with Notice.*

Superior Court of the City of New York.

FANNY D. WYLIE, Plaintiff,
against
THE NORTHAMPTON NATIONAL BANK, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, January 25th, 1882.

HOLMES & ADAMS,
Plaintiff's Attorneys.

P. O. address: No. 115 Broadway New York city, New York.

5 *Notice.*

Take notice that upon your default to appear or answer the above summons judgment will be taken against you for the sum of ($10,180.00) ten thousand one hundred and eighty dollars, with interest from January 25, 1882, and with costs of this action.

HOLMES & ADAMS,
Plaintiff's Attorneys.

6 Superior Court of the City of New York.

FANNIE D. WYLIE
vs.
THE NORTHAMPTON NATIONAL BANK.

CITY AND COUNTY OF NEW YORK, *ss:*

I. W. Gill Wylie, being duly sworn, says that he is the husband of the plaintiff, Fanny D. Wylie, and he is personally acquainted with all the matters hereinafter set forth, except such as are stated on his information and belief, having acted in such respects as the agent for and in behalf of the plaintiff; that a cause of action exists in favor of the above-named plaintiff, Fanny D. Wylie, against the above-named, The Northampton National Bank, to recover a sum of money only, to wit, $10,180, for a breach of the contract
7 hereinafter stated, arising upon the following facts: That the defendant is a corporation duly organized and existing under and by virtue of the acts of Congress of the United States, and has its place of business in the State of Massachusetts, and is a non-resident of the State of New York.

II. That prior to the 26th day of January, 1876, the plaintiff became the lawful owner and holder of eight mortgage bonds for $1,000 each, known as the first-mortgage bonds of the Pacific Railroad Company of Missouri, being known and designated by numbers printed on the face thereof respectively as follows: 137, 588, 641, 1322, 1640, 2184, 2877, 3083, and that each of said bonds had attached thereto and printed on the same paper and sheet all its then unmatured coupons, including coupons hereinafter more particularly de-
8 scribed. Said coupons each bore upon their face a number plainly printed corresponding respectively to the numbers of the bonds above mentioned; that such coupons were in the ordinary form of coupons or interest warrants for the payment of the interest accruing at the rate of 6 per cent. per annum upon each of said bonds semi-annually, and were payable by their terms on the first days of February and August in each year up to the maturity of said bonds. The principal sum of said bonds will be payable in the year 1888.

III. That on or about the 26th day of January, 1876, the defendants' bank, in Northampton aforesaid, was broken into by burglars and a large amount of property by them stolen therefrom, amounting in par value to over $1,600,000. Said property so stolen
9 was composed principally of stocks and railroad bonds, and like securities or obligations; that all of the property so stolen as aforesaid consisted of such securities, excepting about the sum of $12,000 in cash; that among the securities so stolen from said bank were the eight certain bonds of the plaintiff hereinbefore described, with the coupons attached then unmatured.

IV. That all of said bonds and coupons were at the time of said burglary property of the plaintiff, and were on deposit in said bank at Northampton for safe keeping, and ever since said time plaintiff has remained the owner, and now is the owner, of these said bonds

and coupons; that since said burglary the plaintiff has never regained possession of said bonds and coupons, or any of them, but the same, upon information and belief, have been in the possession of the persons who stole the same as aforesaid, or their agents or assigns, except as hereinafter stated; and plaintiff has never been able to learn and has not known, although she has made diligent inquiry, definitely where said bonds and coupons were or who had possession or control of the same, except as hereinafter expressly stated as to certain of said bonds and coupons.

The market value of each of said eight bonds since the year 1879 has not been less than their par value, and the present market value of the same is $1,085 per bond.

V. That shortly after said burglary, the plaintiff being then about to take measures for the recovery of her said eight bonds by the offering of rewards and otherwise, the officers of said bank represented to the deponent, acting for the plaintiff, that the bank was about to take measures for the recovery of all the property so stolen, and expected to be able to recover all of said property in bulk, or the greater part thereof, from the robbers by means of rewards and otherwise, and was undertaking negotiations with persons to deponent unknown for accomplishing the same; and said officers then represented that they expected to secure such restoration if the bank was allowed to act therein in behalf of the plaintiff and in behalf of all other depositors and losers who were in the same position as the plaintiff; that such depositors and losers were at that time very numerous, and in the same position as the plaintiff; and said officers thereupon requested the plaintiff not to undertake any proceedings in her own behalf for the recovery of her said bonds, and to permit the bank to act for her in that behalf.

It was further represented by said officers at that time that the bank was in a better position to negotiate for the return of said stolen property, and could probably accomplish it at less expense than if the individual owners were to act in that respect independently.

That thereupon, relying upon such representations, the plaintiff complied with such request and desisted from all efforts on her own behalf for the recovery of her said bonds as aforesaid.

VI. That thereupon the said bank undertook to act in behalf of the plaintiff in these respects, and, as deponent has been informed by the officers of said bank, took certain proceedings and entered into negotiations from time to time for the recovery of said stolen property; that, as the deponent has been informed by the officers of said bank, some time during the years 1879 and 1880 the said bank recovered and received from persons to the deponent unknown the greater part of such stolen property; that, together with said recovered property, the said bank recovered a large amount of its own property, being a recovery of almost all the separate property of said bank lost in said robbery, and also a large amount of property belonging to individual depositors as aforesaid; that the bank, acting as aforesaid, was wholly negligent of plaintiff's interest, and, by reason of its neglect, the plaintiff's said

property was not and has not been recovered and is entirely lost to the plaintiff except as hereinafter appears; that, as deponent has been informed by such officers as aforesaid, the total amount
14 of securities estimated at its par value recovered as aforesaid amounted to about $1,500,000; that the difference between this sum and the amount of the property originally stolen as aforesaid was by the bank and its officers allowed to be retained by said robbers or their assigns, or by the persons who were then in possession of said stolen property, as a consideration for the restoration of the remainder; that among the securities and property so permitted by the consent of the bank and its officers to be retained as such consideration were the eight bonds belonging to the plaintiff as aforesaid.

That the plaintiff was not informed by the bank of the terms of said arrangement by which such property was restored, but all the proceedings of the bank and its officers taken for the restoration of such property were concealed from the plaintiff, and she has
15 never consented to the action of the bank in these respects except as hereinafter stated.

VII. That by means of the plaintiff's said property, together with other consideration, and by the total sacrifice of the plaintiff's interests in said bonds, the said bank has been enabled to recover, as aforesaid, a large amount of the property of its other depositors, and has reimbursed itself for almost all its own property lost in said robbery and for the expenses which said bank incurred in respect to the matters herein mentioned; that by such means the officers of said bank, with its knowledge and consent, have from time to time negotiated with the said robbers, or other persons, for the recovery of their own separate and individual property, and have recovered the same, or the greater part thereof.

16 That by reason of the acts of said bank and its officers, the bank consenting thereto, and by reason of the wilful neglect of plaintiff's said interests so committed to their charge, as aforesaid, the plaintiff has wholly lost her said property, except the value of 46 coupons of said bonds, which were presented for payment in the city of New York from time to time by persons to plaintiff unknown, or their agents, and which said Pacific Railroad Company of Missouri has refused to pay on such presentation, and which said company has paid to the plaintiff, amounting to $1,380.

That within the last year the Post Office Department of the United States came into possession of four of plaintiff's said bonds, with coupons attached, and a litigation is now pending as to the ownership of said four bonds, and is undetermined, the said
17 robbers, or their agents, as defendant is informed and believes, claiming the same.

VIII. That plaintiff is justly entitled to recover therefor from the defendant the sum of $10,180, the value of said bonds and unpaid coupons over and above all counter-claims, discounts, and set-offs known to the plaintiff and known to the deponent, and that there are no counter-claims, discounts, or set-offs existing in favor of the defendant to the knowledge of the deponent.

That the plaintiff has duly demanded of the defendant all of said bonds and coupons, or their value as aforesaid.

That the above-entitled action is brought for said cause, and the summons therein has been issued, and a copy thereof is hereto annexed; that the plaintiff is a resident of the city and county of New York. No previous application for an attachment has been made herein.

W. GILL WYLIE.

18 Sworn to before me this 26th day of January, 1882.

SETH M. ELDREDGE,
Notary Public, N. Y. City & Co.

(Endorsed:) N. Y. superior court. Fanny B. Wylie *vs.* The Northampton National Bank. Summons and affidavit. Holmes & Adams, attorneys for plaintiff, 115 Broadway, New York. To be filed. W. H. A., J. Filed Jan'y 26th, 1882.

19 *Undertaking on Attachment.*

Superior Court of the City of New York.

FANNY D. WYLIE, Plaintiff,
against
THE NORTHAMPTON NATIONAL BANK, Defendant.

The above-named plaintiff having applied to one of the judges of this court for a warrant of attachment against the property of the above-named defendant, The Northampton National Bank, as a non-resident, in one of the cases provided by law, we, W. Gill Wylie, of No. 40 West 40th street, in the city of New York, and J. C. Westervelt, of No. 47 West 51st street, in the city of New York, do, jointly and severally, undertake, pursuant to the statute in such case made made and provided, in the sum of one thousand dollars,
20 that if the said defendant recover judgment in this action, or if the warrant of attachment is vacated, the plaintiff will pay all costs which may be awarded to the defendant and all damages which the defendant may sustain by reason of the attachment, not exceeding the sum above mentioned.

Dated New York, January 26th, 1882.

W. GILL WYLIE.
J. C. WESTERVELT.

CITY AND COUNTY OF NEW YORK, *ss:*

W. Gill Wylie, being duly sworn, says that he is a resident and a householder within the State of New York, and is worth twice the sum specified in the above undertaking over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

W. GILL WYLIE.

21 Sworn to before me this 26th day of January, 1882.
WILLIAM H. CLARKSON,
Notary Public for New York County, N. Y.

CITY AND COUNTY OF NEW YORK, *ss:*

J. C. Westervelt, being sworn, says that he is a resident and a householder within the State of New York, and is worth twice the sum specified in the above undertaking over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

J. C. WESTERVELT.

Sworn to before me this 26th day of January, 1882.
WILLIAM H. CLARKSON,
Notary Public, New York County, N. Y.

22 (Endorsed:) N. Y. superior court. Fanny D. Wylie against The Northampton National Bank. Original undertaking on attachment. Holmes & Adams, attorneys for plaintiff.

I hereby approve the within undertaking.
Dated 26 Jan'y, 1882.

W. H., *A. J.*

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that on this twenty-sixth day of January, 1882, before me personally appeared the above-named W. Gill Wylie and J. C. Westervelt, known to me to be the individuals described in and who executed the above undertaking, and severally acknowledged that they executed the same.

WILLIAM H. CLARKSON,
Notary Public for New York County, N. Y.

23 The Superior Court of the City of New York.

FANNY D. WYLIE *vs.* THE NORTHAMPTON NATIONAL BANK.

Upon the annexed affidavit of George H. Adams, one of the plaintiff's attorneys, verified February 16th, 1882, upon the annexed return of the sheriff of the city and county of New York, that he is unable to make personal service of the summons in this action, and upon the annexed verified original complaint herein, and it appearing to me by the said complaint that a sufficient cause of action exists against the defendant, The Northampton National Bank, and by said affidavit to my satisfaction that the defendant is a foreign corporation created by and under the acts of Congress of the
24 United States, and has its place of business at Northampton, in the State of Massachusetts, and that it has no office within this State, and that the plaintiff is a resident of this State, and that the plaintiff has been and will be unable with due diligence to make personal service of the summons on said corporation within the State according to law, and that the cashier of said corporation is

John Whittlesey, who resides at and whose post-office address is Northampton, Hampshire county, State of Massachusetts:

Now, on motion of Messrs. Holmes & Adams, attorneys for the plaintiff herein, it is ordered that service of the summons herein upon the defendant, The Northampton National Bank, be made by publication thereof (with the notice required by law) in New York Daily Times and Daily Register (two newspapers published
25 in the city and county of New York, and herein designated as most likely to give notice to the said defendant, The Northampton National Bank), not less than once a week for six successive weeks, or, at the option of the plaintiff, by service of the summons herein, and of a copy of the complaint, and of this order (with the notice required by law) upon the said defendant, The Northampton National Bank, in the person of its officers, as specified in section 432 of the Code of Civil Procedure.

And it is further ordered that on or before the day of the first publication the plaintiff deposit in the general post office in the city and county of New York one set of copies of the summons, complaint, and this order contained in a securely-closed post paid wrapper, directed to the said defendant, The Northampton
26 National Bank, and also directed to John Whittlesey, cashier of said defendant, at Northampton, Hampshire county, in the State of Massachusetts.

New York, February 17th, 1882.

WM. H. ARNOUX, *Judge.*

27 CITY AND COUNTY OF NEW YORK, *ss:*

Superior Court of the City of New York.

FANNY D. WYLIE *vs.* THE NORTHAMPTON NATIONAL BANK.

George H. Adams, being duly sworn, says that he is one of the plaintiff's attorneys in the above-entitled action; that the plaintiff is a resident of the city and county of New York; that the defendant, The Northampton National Bank, is a foreign corporation having, as deponent is informed and verily believes, no office within this State, and that the said defendant has its place of business at Northampton, Hampshire county, State of Massachusetts, and
28 that plaintiff will be unable, with due diligence, to make personal service of the summons herein upon the said defendant within the State, and that John Whittlesey is the cashier of said defendant, and resides at and his post-office address is Northampton, Hampshire county, Massachusetts.

GEORGE H. ADAMS.

Sworn to before me this 16th of February, 1882.

HENRY C. ANDREWS (91),
Notary Public N. Y. County.

29 *Summons with Notice.*

Superior Court of the City of New York.

FANNY D. WILEY, Plaintiff,
against
THE NORTHAMPTON NATIONAL BANK, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, January 25th, 1882.

HOLMES & ADAMS,
Plaintiff's Attorneys.

30 P. O. address: No. 115 Broadway, New York city, New York.

Notice.

Take notice, that upon your default to appear or answer the above summons judgment will be taken against you for the sum of ($10,180) ten thousand one hundred and eighty dollars, with interest from January 25, 1882, and with costs of this action.

HOLMES & ADAMS,
Plaintiff's Attorneys.

31 Superior Court of the City of New York.

FANNY D. WILEY *vs.* THE NORTHAMPTON NATIONAL BANK.

The plaintiff for her complaint herein, by Holmes & Adams, her attorneys, alleges—

I. That the plaintiff, at the commencement of this action, was and is now a resident of the State of New York.

Upon information and belief the defendant is a corporation duly organized and existing as a national banking corporation under and by virtue of the acts of Congress of the United States, and has its place of business, to wit, its bank, at Northampton, in the State of Massachusetts.

II. That prior to the 26th day of January, 1876, the plaintiff
32 became the lawful owner and holder in her own right of eight mortgage bonds, known and designated as the first-mortgage bonds of the Pacific Railroad Company of Missouri, each of which was for the payment of $1,000; that said eight bonds had each attached thereto, and printed on the same paper and sheet, coupons or interest warrants, including the coupons hereinafter more particularly described. Said coupons were by their terms obligations of said company for the payment of $30 each, being the semi-annual interest accruing on each of said bonds at the rate of six per cent. per annum, and were payable successively on the first days of February

and August in each and every year to the maturity of said bonds, in the year 1888. Said bonds and said coupons were known
33 and designated by numbers printed on the face thereof, respectively, as follows: 137, 188, 641, 1322, 1640, 2184, 2877, 3083.

III. That prior to the 26th day of January, 1876, the plaintiff intrusted to the defendant and to its custody for safe keeping all the said eight bonds, with all the then unmatured coupons attached to each, and the defendant accepted and received the same and agreed to keep the same safely for the plaintiff and to deliver the same to her on demand; that on the 26th day of January, 1876, and at the time of the burglary hereinafter referred to, the said bonds and coupons last described had been continuously, and were still, in the possession and under the care and custody of the defendant under said agreement.

That the defendant, not regarding its promises and undertakings, did not use due care in the keeping of the said
34 bonds and coupons so as beforesaid intrusted to its care and custody, but for the want of due care on the part of the defendant suffered them to be exposed to loss and theft; that upon plaintiff's demand for the return to her of said bonds and coupons the defendant was unable and failed to comply with such demand and neglected and refused to redeliver said bonds and coupons to her, the said plaintiff, alleging as a reason that said bonds and coupons had been stolen from defendant's banking house on or about January 26, 1876.

That the defendant, so alleging, delared to the plaintiff that on or about January 26, 1876, said bonds and coupons being, as aforesaid, in the possession, care, and custody of the defendant, the
35 defendant's said bank was broken into by burglars, or persons to the plaintiff unknown, and a large amount of property by them taken therefrom, amounting in face or par value to over $1,600,000, including the plaintiff's said bonds and coupons; that the property so taken as aforesaid consisted chiefly of bonds and stocks and other like securities or obligations, and partly of money, including a large amount of property belonging to the defendant.

IV. That ever since said 26th day of January, 1876, the plaintiff has remained and now is the rightful owner of all of said bonds, and of all of said coupons so taken as aforesaid, except as stated hereinafter; that, except as stated hereinafter, the plaintiff has never required possession of said bonds and coupons, or any of
36 them, but the same have been wrongfully withheld from her, to her great damage, as hereinafter appears. Upon information and belief, the market value of said bonds, with unmatured coupons annexed, has since said burglary been not less than their par value, and the value of said bonds, with unmatured coupons attached, was at the commencement of this action $1,085 per bond; that the value of said coupons, as they successively matured from time to time, was $30 for each coupon.

V. That the plaintiff relied upon the declarations and represen-

tations of the defendant that the said bonds and coupons had been stolen and taken as aforesaid, and shortly thereafter, and in or about the month of March, 1876, the plaintiff was intending and was about to enter in good faith upon negotiations and to take measures for
37 the recovery of her said bonds and coupons from whomsoever then possessed the same; that thereafter and about the time last mentioned the defendant represented to the plaintiff that the defendant was about to take measures for the recovery of the property so taken, and expected to recover all of said property in bulk, or the greater part thereof, from the persons taking the same as aforesaid, by means of rewards and other measures, and was undertaking, or about to undertake, negotiations with said person or persons, to plaintiff unknown, for accomplishing the same; and the defendant then further represented that it expected to receive such restoration if it was allowed to act therein in behalf of the plaintiff and in behalf of other depositors and losers, who were in the same position as the plaintiff; and the defendant further repre-
38 sented that it, the said defendant, was in a better position to negotiate for the restoration of said property as aforesaid, and could accomplish the same at less expense than if the plaintiff and other individuals, owners and losers of said property, were to act in that respect independently.

That thereupon and at or about the time last stated the defendant requested the plaintiff to permit and authorize the defendant to act for her and in her behalf in the respects mentioned, and in such negotiations, for the recovery of her said bonds and coupons with the bonds, stocks, securities, and other property of the defendant and other owners and losers of property as aforesaid, and further requested the plaintiff not to undertake negotiations with or offer rewards or other inducements to the persons who had taken
39 or were in possession of said bonds and other property as aforesaid for the return of the same.

That thereupon, and relying upon such representations and all of them, the plaintiff complied with such requests of defendant, and did not undertake negotiations with or offer rewards or other inducements to such persons as aforesaid for the return of her said bonds and coupons, and permitted and authorized the defendant to act for her and in her behalf in the respects mentioned, and as requested in such and any negotiations for the recovery of her said bonds and coupons, with the bonds, stocks, securities and other property of the defendant and other owners and losers of said property as aforesaid.

VI. Upon information and belief, that thereupon the said
40 defendant undertook to act in behalf of the plaintiff in the respects mentioned, and took certain proceedings and entered into certain negotiations with the persons who had taken said property or possessed the same as aforesaid for the recovery of the same; that some time during the years 1879 and 1880 the defendant, acting as aforesaid, recovered and received from said persons the greater part of said stolen property, taken as aforesaid on the 26th day of January, 1876, including a large amount of the separate property

of the defendant, amounting in all in face or par value to about $1,500,000; and thereupon the defendant settled and compounded with said persons for all claims arising or growing out of such taking or robbery as aforesaid.

Upon information and belief, that the difference be-
41 tween the amount of property so recovered, and the amount of property taken or stolen on January 26, 1876, as aforesaid, and all the property so taken and not recorded was by the defendant allowed and agreed to be retained by and released to the said persons as a consideration or reward for the restoration of the remainder as aforesaid. That among the securities and property so allowed and agreed to be retained and so released by the defendant were the said eight bonds of the plaintiff and all the coupons thereto belonging.

That the plaintiff was not informed at the time by the defendant of the terms of said agreement or arrangement between the defendant and said persons, but all the proceedings of the defendant in those respects and for the restoration of such property were con-
42 cealed from the plaintiff, and she has never consented to the action of the defendant therein.

Upon information and belief, that by means of plaintiff's said property, together with other consideration and by the total sacrifice of the plaintiff's said property, the defendant was enabled to recover, and did recover as aforesaid, a large amount of its own property and the property of its other depositors, and has reimbursed itself for the greater part of its losses in said robbery and for the expenses which the defendant incurred in respect to the matters herein mentioned.

VII. That the defendant, not regarding its promises and undertakings, did not take due care of the plaintiff's interests as aforesaid, but, on the contrary, sacrificed the same for its own advantage,
43 and so negligently and carelessly conducted itself with respect to plaintiff's said property and interest, and took so little care thereof that by and through the mere neglect and improper conduct of the defendant and its servants, and by the wilful neglect of plaintiff's said interests so committed to its charge, the plaintiff has wholly lost her said property, being said eight bonds and accompanying coupons, except the value of 46 of said coupons paid to plaintiff by said railway company, to her damage $10,180.

That prior to the commencement of this action the plaintiff duly demanded the return of her said bonds and coupons or the payment to her of *of* the damage as aforesaid from the defendant.

Wherefore the plaintiff prays judgment against the defend-
44 ant for ten thousand one hundred and eighty dollars, with interest thereon from the 26th day of January, 1882, besides the costs of this action.

HOLMES & ADAMS,
Pl'ff's Atty's.

CITY AND COUNTY OF NEW YORK, *ss:*

W. G. Wylie, being duly sworn, says that he is the husband and agent of the plaintiff; that the foregoing complaint is true of his own

knowledge, except as to the matters herein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the reason this verification is not made by the plaintiff is that in the matters therein referred to the deponent has conducted her affairs as her husband and agent, and is therefore personally acquainted with said matters except as aforesaid.

W. GILL WYLIE.

45 Sworn to before me this 16th day of February, 1882.

SETH M. ELDREDGE, (1)
Notary Public N. Y. City and Co.

(Endorsed:) Superior court of the city of New York. Fanny D. Wylie *vs.* The Northampton National Bank. Order of publication of summons, affidavit, and complaint. Holmes & Adams, plaintiff's attorneys, 115 Broadway, New York City. Filed Feb'y 17, 1882.

46 Superior Court of the City of New York.

FANNY D. WYLIE *against* THE NORTHAMPTON NATIONAL BANK.

The defendant corporation, by Peckham & Tyler, its attorneys, answers the complaint herein as follows:

I. The defendant admits that the defendant is a national bank, duly incorporated, and further, upon information and belief, admits and alleges that securities to the amount in par value of about sixteen hundred thousand dollars, belonging to the defendant and to its officers and to other persons, were stolen from defendant's vault by armed burglars in January, 1876, and that among said securities were the bonds claimed by the plaintiff as plaintiff's
47 property; and defendant, upon information and belief, denies each and every other allegation in said complaint contained.

II. And for a further defence defendant alleges, on information and belief, that the cause of action in the complaint alleged did not accrue within the six years immediately preceding the commencement of this action.

III. And for a further defence defendant alleges that said bonds, said to be plaintiff's property and in the complaint mentioned, prior to and at the time of said burglary, were held by plaintiff in the vaults of the defendant as a favor to plaintiff and by permission of one of defendant's officers, but without the consent or agreement of the defendant, and were not on deposit with defendant for any reward or consideration to defendant, and were left in defendant's vault,
48 as aforesaid, on the special agreement made with and by the plaintiff, that the said bonds should remain at the risk of the plaintiff, and that defendant should in no case be responsible therefor; and defendant alleges that defendant never authorized such officer to receive said bonds or to make any agreement for the deposit of plaintiff's bonds. And defendant further alleges that defendant did not make, and under its corporate powers defendant had no power or authority to make, the contract or agreement mentioned in

folios 11, 12, 13, and 14 of the complaint, and that no person had any power or authority from defendant to make such agreement (mentioned in folios 11, 12, 13, and 14 of the complaint as aforesaid) in defendant's behalf; and defendant further alleges that neither defendant nor the officers or agents of defendant had author-
49 ity to make, or did in fact ever make or attempt to make, the further agreement set forth in folios 16 and 17 of the complaint, or any similar agreement; and defendant further alleges that the employment and hiring of the defendant by plaintiff, for the purposes for which plaintiff in the complaint claims to have employed and hired the defendant, and the composition with the burglars which plaintiff contemplated (and which plaintiff claims plaintiff was prevented by the defendant from accomplishing) were illegal and contrary to good morals and public policy.

IV. And for a further defence defendant alleges, upon information and belief, that the defendant, while having no duty or obligation to the plaintiff in the premises, nevertheless did use good
50 faith and due care in all the transactions mentioned in the complaint, and the defendant committed no breach of trust and was guilty of no breach of trust, fraud, carelessness, or negligence whatever in any or all of said matters; but, on the contrary, defendant alleges that at its own expense defendant enabled plaintiff to recover four of the eight bonds, for the value of which plaintiff here sues defendant, and defendant alleges that plaintiff (upon information furnished by defendant) has, in fact, recovered back four of the said eight bonds here sued for; and defendant further alleges, upon information and belief, that plaintiff's failure to recover back the remaining four of the eight bonds here sued for was occasioned solely by the carelessness and negligence of the agents employed by plaintiff and not by the defendant. Wherefore
51 defendant demands that the complaint herein be dismissed with costs.

PECKHAM & TYLER,
Defendant's Attorneys.

CITY AND COUNTY OF NEW YORK, *ss:*

William G. Peckham, duly sworn, says that he is one of the attorneys for the defendant herein; that he has read the foregoing answer, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the reason why this implication is not made by the defendant is that the defendant is a foreign corporation, and that he is one of the attorneys herein for the said corporation; that the grounds of deponent's belief as to the matters in said complaint not set forth upon deponent's knowledge are the
52 statements of defendant's officers and agents made to deponent, and the letters of said officers and agents written to deponent in relation thereto, and an inspection of various papers and documents relating to the issues of this action.

W. G. PECKHAM.

Sworn to before me this 25th day of March, 1882.
CHAS. I. CONNELL,
Notary Public, N. Y. Co.

(Endorsed:) N. Y. superior court. Fanny D. Wylie ag'st The Northampton National Bank. Answer. Peckham & Tyler, def't's att'ys, 111 Broadway, N. Y. city.

53 Service of a copy of the within answer is admitted this 25th day of March, 1882.
HOLMES & ADAMS,
Pl'ff's Att'ys.

Filed March 30, 1882.

54 At a special term of the superior court of the city of New York held at the chambers thereof, at the new court-house in the city of New York on the 30th day of March, 1882.
Present: Hon. Charles H. Truax, judge.

FANNY D. WYLIE *ag'st* THE NORTHAMPTON NATIONAL BANK.

Upon reading and filing the answer to the complaint in this action (the summons and complaint herein having been heretofore filed by the plaintiff), and the defendant having further filed an affidavit of Eliphalet W. Tyler and a notice of appearance, and the appearance of the defendant having been duly entered in
55 said action, and the said defendant having simultaneously therewith presented to and filed in this court its petition sworn to on the 27th day of March, 1882, praying for the removal of this action into the circuit court of the United States for the southern district of New York, in the second circuit, pursuant to the act of Congress approved March 3rd, 1875, in such case made and provided, and it duly appearing thereby, and also by the summons, complaint, and answer herein, to the satisfaction of this court, that the present suit is a suit of a civil nature at law, and was brought in this court by the said Fanny D. Wylie, who, at the time of the commencement thereof, was and has ever since been and now is a citizen of and resident in the State of New York as plaintiff against the said The Northampton National Bank, which was at the commencement of said suit and has ever since
56 been and now is a corporation duly created and organized and existing under and by virtue of the laws of the United States, and a citizen of and a resident in the State of Massachusetts; and it further appearing to the satisfaction of the court as aforesaid that the matter in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars ($500), and that it is a suit in which there is a controversy between citizens of different States, to wit, between the plaintiff, a citizen of and resident in the State of New York, and the defendant, a citizen of and resident in the State of Massachusetts, and that there has been no trial of said suit, nor any term at which the same could be tried, and the said petitioner having made and filed with said petition a bond with good and

sufficient surety for its entering in such circuit court on the
57 first day of its next session a copy of the record in such suit, and for paying all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for its there appearing and entering special bail in such suit if special bail was originally requisite therein, and for its doing all such other appropriate acts as are by the said act of Congress required to be done upon the removal of a suit into the United States court, such bond being a bond executed by said petitioner as principal and John B. Tyler and William K. Soutter as sureties, which is duly approved and filed:

Now, on motion of Peckham & Tyler, attorneys for said petitioner, it is hereby ordered that the said petition and bond be and
58 the same are hereby accepted by this court, and it is further ordered that the said cause be, and the same is hereby, and by the proceedings aforesaid, removed into the said circuit court of the United States for the southern district of New York in the second circuit.

Ent. C. H. I., *J. S. C.*

(Endorsed:) N. Y. superior court. Fanny D. Wylie against The Northampton National Bank. Order removing cause to United States court. Peckham & Tyler, 111 Broadway, N. Y. city.

59 Superior Court of the City of New York.

FANNY D. WYLIE *ag'st* THE NORTHAMPTON NATIONAL BANK.

To the honorable the superior court of the city of New York:

The petition of the Northampton National Bank respectfully showeth:

That heretofore and on or about the 26th day of January, 1882, a suit of a civil nature at law was brought in this court by Fanny D. Wylie, as plaintiff, against your petitioner, as defendant. That said plaintiff was at the time of the commencement of said suit, and has ever since been and now is, a citizen of and resident within the State of New York, residing in the city of New York, in said State, and that your petitioner was at the time of the commencement
60 of such suit, and has ever since been and now is a corporation duly created and organized and existing under and by virtue of the laws of the United States, and a citizen of and resident in the State of Massachusetts, having its principal office at Northampton, in said last-mentioned State. That the said suit was brought for the recovery by the said Fanny D. Wylie against your petitioner of the sum of ten thousand one hundred and eighty dollars for the value of certain bonds and coupons alleged to have been lost through defendant's negligence, as stated and set forth in the complaint in said action. That your petitioner denies any liability for said sum, or any part thereof. That issue has been joined by the service by your petitioner of the answer on the 25th day of March, 1882.

61 That the said suit is a suit of a civil nature at law in which there is a controversy between citizens of different States, to wit, between the plaintiff aforesaid, a citizen of and resident within the State of New York, and your petitioner, a corporation duly created and organized and existing under and by virtue of the laws of the United States, and a citizen of and resident in the State of Massachusetts, and that the matter in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that there has been no trial of said suit, nor any term at which the same could be tried, and that the said suit is still pending undetermined in this court, and that, as your petitioner is informed and believes, the next term of this court at which the said cause could first be tried is the trial term of said court appointed to be held on
62 the first Monday of May next at the court-house in the city of New York, and that your petitioner desires to remove this suit before the trial thereof into the next circuit court of the United States to be held in the southern district of New York, in the second circuit, in pursuance of the provisions of law as contained in the act of Congress, approved March 3rd, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes." Wherefore your petitioner prays for the removal of the said suit into the circuit court of the United States, to be held in the district where such suit is pending, to wit, into the circuit court of the United States for the southern district of New York, in the second circuit, and makes and files with this petition a bond with good and sufficient surety for its entering in said
63 circuit court on the first day of its next session a copy of the record in such suit and for paying all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for its there appearing and entering special bail, if special bail was originally requisite therein, and for its doing all such other appropriate acts as by the said act of Congress approved March 3rd, 1875, are required to be done upon the removal of a suit into the United States court.

And your petitioner prays this honorable court to accept said petition and bond and proceed no further in such suit.

And your petitioner will ever pray, etc.

THE NORTHAMPTON NATIONAL BANK,
By OSCAR EDWARDS, *President.*

COMMONWEALTH OF MASSACHUSETTS, }
64 *County of Hampshire, Town of Northampton,* } *ss:*

Oscar Edwards, being duly sworn, deposes and says that he resides in said town of Northampton; that he is over the age of twenty-one years; that he is the president of the Northampton National Bank, the petitioner described in and which has executed the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on infor-

mation and belief, and that as to those matters he believes it to be true. Deponent further says that the grounds of his information and belief are a personal acquaintance and connection with the matters stated in said petition and information and advice received from the counsel of said petitioner in this action and from the other officers of said bank.

65 OSCAR EDWARDS.

Sworn to before me this 27th day of March, 1882.
[NOTARIAL SEAL.] CHARLES N. CLARK,
Notary Public.

THE COMMONWEALTH OF MASSACHUSETTS, *Hampshire,* } *ss:*

I, William P. Strickland, clerk of the supreme judicial court, a court of record for the county and Commonwealth aforesaid, and also clerk of said county, do certify that Charles N. Clark, Esq., whose signature is affixed to the jurat on the paper hereto annexed, was at the date thereof a notary public within and for said county, duly commissioned and acting under the authority of this Commonwealth, and that full faith and credit is and ought to be given to his acts and attestations done in that capacity, and that I am
66 acquainted with the handwriting of the said Charles N. Clark, Esq., and believe his signature to said jurat is genuine; also that the said Charles N. Clark, Esq., was duly authorized to take the acknowledgment of deeds and to administer oaths under the laws of said Commonwealth.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme judicial court and of said county this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] WM. P. STRICKLAND, *Clerk.*

(Endorsed:) Superior court of the city of New York. Fanny D. Wylie ag'st The Northampton National Bank. Petition to remove cause to United States court. Peckham & Tyler, def't's atty's, 111 Broadway, N. Y. city.

67 *Notice of Appearance.*

Superior Court of the City of New York.

FANNY D. WYLIE *against* THE NORTHAMPTON NATIONAL BANK.

SIRS: Please to take notice that the defendant appears in this action, and that we are retained as attorneys for the defendant therein, and demand that a copy of the complaint, and all papers in this action, be served on us at our office, number 111 Broadway, New York city.

Jan. 28th, 1882.
Yours, &c., PECKHAM & TYLER,
Attorneys for Defendant.

Office No. and post-office address: 111 Broadway, New York city.

To Holmes & Adams, Esq's, plaintiff's attorneys.

68 (Endorsed:) Superior Court of the city of New York. Fanny D. Wylie *vs.* The Northampton National Bank. Notice of appearance of defendant. Peckham & Tyler, attorneys for defendant, 111 B'dway, N. Y. city.

Due and timely service of a notice, of which the within is a copy, admitted this 28th day of January, 1882.

(S'g'd) HOLMES & ADAMS,
Plaintiff's Attorneys.

69 City and County of New York, *ss:*

Superior Court of the City of New York.

Fanny D. Wylie *vs.* The Northampton National Bank.

Eliphalet W. Tyler, being duly sworn, says he is one of the attorneys for the defendant in the above-entitled action, the said defendant having appeared herein by Peckham & Tyler, its attorneys. That said action was commenced on or about the 26th day of January, 1882; that issue was joined herein on the 25th day of March, 1882, by the service of an answer to the complaint herein; that neither party has served notice of trial; that the next trial term of this court has been appointed to be held on the 1st Monday of April, 1882; that the defendant desires to have the said suit removed into
70 the circuit court of the United States for the southern district of New York, in the second circuit, and for that purpose presents and files herewith its petition and bond, with good and sufficient surety, in accordance with the provisions of law in that behalf. No previous application has been made for the orders now asked for.

E. W. TYLER.

Sworn to before me this 30th day of March, 1882.

GEO. P. HOTALING,
Comm'r of Deeds, N. Y. City & Co.

(Endorsed:) N. Y. superior court. Fanny D. Wylie ag'st The Northampton National Bank. Order entering appearance. Aff't and notice of appearance. Peckham & Tyler, def't's att'ys, 111 B'dway, N. Y. city. Filed March 30, 1882.

71 Superior Court of the City of New York.

Fanny D. Wylie *ag'st* The Northampton National Bank.

Know all men by these presents that we, the Northampton National Bank, a corporation duly created and organized and existing under and by virtue of the laws of the United, as principal, and John B. Tyler of Dover Plains, New York, by occupation physician, and William K. Soutter, of New Brighton, Staten Island, by occupation banker, as sureties, are held and firmly bound unto Fanny D. Wylie in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Fanny D. Wylie, her ex-

ecutors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our successors, heirs, execu-
72 tors, and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated the 27th day of March, in the year one thousand eight hundred and eighty-two.

Whereas the above-named Fannie D. Wylie has heretofore and on or about the twenty-sixth day of January, 1882, brought a suit of a civil nature, at law, in the superior court of the city of New York, against the said The Northampton National Banks, above-named, which is still pending undetermined in said court; and whereas the said The Northampton National Bank intends simultaneously with the filing of this bond to file its petition in said suit in such State court for the removal of such suit into the circuit court of the United States to be held in the district where such suit is pending, to wit, the circuit court of the United States for the
73 southern district of New York, in the second circuit, according to the provisions of the acts of Congress in such case made and provided: Now, therefore, the condition of this obligation is such that if the said petitioner, The Northampton National Bank, shall enter in the said circuit court of the United States for the said southern district of New York, in the second circuit, on the first day of its next session, a copy of the record in such suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also there appear and enter special bail in such suit if special bail was originally requisite therein, and shall do or cause to be done such other appropriate acts as by the said act of Congress approved March third, eighteen hundred and seventy-five, are required to be done upon the removal of a suit into
74 the United States court, then the above obligation to be void; otherwise to remain in full force and virtue.

THE NORTHAMPTON NATIONAL BANK,
By OSCAR EDWARDS, *President.* [L. S.]
JOHN B. TYLER. [L. S.]
W. K. SOUTTER. [L. S.]

COUNTY OF DUTCHESS, *ss:*

John B. Tyler, one of the obligors named in the foregoing bond, being duly sworn, says that he is a resident of and a householder within the State of New York, and is worth the sum of one thousand dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

JOHN B. TYLER.

Sworn to before me this 28th day of March, 1882.

HORACE D. HUFCUT,
Notary Public.

75 CITY AND COUNTY OF NEW YORK, *ss:*

William K. Soutter, one of the obligors named in the foregoing bond, being duly sworn, says that he is a resident of and a freeholder within the State of New York, and is worth the sum of one thousand dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

W. K. SOUTTER.

Sworn to before me this 28th day of March, 1882.

CHAS. I. CORNELL,
Notary Public, N. Y. Co., N. Y.

COMMONWEALTH OF MASSACHUSETTS, }
County of Hampshire, Town of Northampton, } *ss:*

On this 27th day of March, 1882, before me personally came and appeared Oscar Edwards, the president of the Northampton
76 National Bank, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resided in the said town of Northampton; that he was the president of the Northampton National Bank and knew the corporate seal of said bank; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed thereto by order and direction of the board of directors of said bank, and that he thereupon, by the like order and direction, subscribed his name thereto as president of said bank.

[SEAL.] CHARLES N. CLARK,
Notary Public.

THE COMMONWEALTH OF MASSACHUSETTS, }
Hampshire [County], } *ss:*

I, Wm. P. Strickland, clerk of the supreme judicial court, a court of record for the county and Commonwealth aforesaid, and also
77 clerk of said county, do certify that Charles M. Clark, Esq., whose signature is affixed to the jurat on the paper hereto annexed, was at the date thereof a notary public within and for said county, duly commissioned and acting under the authority of the Commonwealth, and that full faith and credit is and ought to be given to his acts and attestations done in that capacity, and that I am acquainted with the handwriting of the said Charles N. Clark, and believe his signature to said jurat is genuine; also that the said Charles N. Clark, Esq., was duly authorized to take the acknowlment of deeds, and to administer oaths under the laws of said Commonwealth.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme judicial court, and of said county, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and eighty-two.

78 [SEAL.] WM. P. STICKLAND, *Clerk.*

COUNTY OF DUTCHESS, *ss:*

On this 28th day of March, 1882, before me personally appeared John B. Tyler, to be personally known, and known to me to be one of the individuals described in and who executed the foregoing bond, and acknowledged that he executed the same.

HORACE D. HUFCUT,
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 28th day of March, 1882, before me personally came William K. Soutter, to me personally known, and known to me to be one of the individuals described in and who executed the
79 foregoing bond, and acknowledged to me that he executed the same.

CHAS. I. CORNELL,
Notary Public, New York County.

(Endorsed:) Superior court of the city of New York. Fanny D. Wylie ag'st The Northampton National Bank. Bond on removal of cause to United States court. Peckham & Tyler, def't's att'ys, 111 Broadway, N. Y. city. I hereby approve the within bond and the sufficiency of the sureties therein. Dated March 30th, 1882. C. H. T., J. Filed March 30, 1882.

80 All which we have caused by these presents to be exemplified and the seal of the superior court of the city of New York to be hereunto affixed.

Witness Charles H. Truax, Esquire, presiding judge of our said court, at the city hall of the city of New York, this 14th day of April, A. D. 1882.

THOMAS BOESE, *Clerk.*

Superior Court of the City of New York.

FANNY D. WYLIE *against* THE NORTHAMPTON NATIONAL BANK.

I, Charles H. Truax, presiding judge of the superior court of the city of New York, do hereby certify that Thomas Boese, whose name is subscribed to the preceding exemplification, is the
81 clerk of the said superior court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said superior court of the city of New York, and that the attestation thereof is in due form of law.

Dated New York, April 14th, 1882.

CHARLES H. TRUAX,
Presiding Judge of the Superior Court of the City of New York.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Thomas Boese, clerk of the superior court of the city of New York, do hereby certify that Charles H. Truax, whose name
82 is subscribed to the preceding certificate, is the presiding judge of the superior court of the city of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of said court, this 14th day of April, 1882.

[Seal of the Superior Court of the City of New York.]

(Signed) THOMAS BOESE, *Clerk.*

(Endorsed:) New York superior court. Fanny D. Wylie against The Northampton National Bank. Exemplified copy of record. Peckham & Tyler, def't's att'ys, 111 B'dway, N. Y. U. S. circuit court. Filed Apr. 17, 1882. Joseph M. Deuel, clerk.

83 Circuit Court of the United States for the Southern District of New York.

FANNY D. WYLIE *ag'st* THE NORTHAMPTON NATIONAL BANK.

SIR: You will take notice that we are retained by, and hereby appear for, The Northampton National Bank, the defendant in the above-entitled action, and you will please enter our appearance therein accordingly.

New York, April 17th, 1882.

Yours, &c.

PECKHAM & TYER,
Defendant's Attorneys.

To Joseph M. Deuel, Esq., clerk United States circuit court, southern district of New York.

84 (Endorsed:) U. S. circuit court, southern district of New York. Fanny D. Wylie ag'st The Northampton National Bank. Notice of appearance. Peckham & Tyler, def't's att'ys, 111 Broadway, N. Y. U. S. circuit court. Filed Apr. 17, 1882. Joseph M. Deuel, clerk.

85 United States Circuit Court for the Southern District of New York.

FANNY D. WYLIE *vs.* THE NORTHAMPTON NATIONAL BANK.

The replication of the plaintiff, Fanny D. Wylie, to the answers and pleas of the defendant, The Northampton National Bank:

This repliant, saving and reserving to herself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answers and pleas, and each of them, for replication thereunto, says

that she will aver, maintain, and prove her complaint or declaration to be true, certain, sufficient in the law, excepting
86 this, that since the commencement of this action, and since the service and filing of said answers and pleas, to wit, on or about the 12th day of April, 1882, in a certain action in this court, in which this plaintiff was plaintiff, and Henry G. Pearson was defendant, this plaintiff had judgment for the possession, and since said date and under said judgment she has had and now has possession of four of the certain bonds in the complaint mentioned, with the coupons thereto belonging, and maturing since the first day of August, 1881, which said bonds are distinguished by the numbers 1322, 1640, 2184, 3083, and as to which bonds and coupons the plaintiff reduces the amount prayed for in her said complaint or declaration; and that the said answers and pleas are uncertain, untrue, and insufficient to be replied unto by this repli-
87 ant, excepting, however, the admissions therein contained.

And further and separately replying that, at the time of the commencement of this action, under and by virtue of the laws of the State of New York, the defendant was not allowed and is not now permitted or allowed to defend against the claims set forth in the said complaint or declaration upon the ground that the same did not accrue within six years prior to the commencement of this action, and that such defence set forth in the II paragraph of said answers and pleas is insufficient in law.

All of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct and humbly pray as in and by her declaration she has already prayed.

HOLMES & ADAMS,
Atty's for Plaintiff.

88 (Endorsed:) U. S. circuit court. Wylie *vs.* The Northampton National Bank. Replication. Holmes & Adams, attorneys for pl'ff, 115 Broadway, N. Y. city. U. S. circuit court. Filed Apr. 26, 1882. Joseph M. Deuel, clerk.

89 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 24th day of January, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Hoyt H. Wheeler, judge.

FANNY D. WYLIE *vs.* THE NORTHAMPTON NATIONAL BANK.

This case being still on trial, the jurors sworn in it are called and severally answer to their names.

The court denies the motion to dismiss the complaint herein.

Mr. Peckham moves that the court direct the jury to find a verdict for the defendant, and is heard in support of said motion.

Mr. Adams is heard in opposition thereto.

The court directs the jury to find a verdict for the defendant.

90 The jury say that, by direction of the court, they find a verdict for the defendant, and so say they all.

On motion of Mr. Adams:

Ordered, That the plaintiff have a stay of proceedings on the verdict for sixty days within which to prepare and serve bill of exceptions herein.

A copy.

JOSEPH M. DEUEL, *Clerk.*

91 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York on Wednesday, the 31st day of January, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Hoyt H. Wheeler, judge.

FANNY D. WYLIE *vs.* THE NORTHAMPTON NATIONAL BANK.

On motion of Peckham & Tyler, defendant's attorneys, after hearing W. G. Peckham, of counsel for defendant, in support of the motion, and George H. Adams, on behalf of plaintiff, it is hereby ordered that the stay of proceedings heretofore granted be so
92 far modified as to allow defendant to enter judgment herein and procure the release of its property attached from the lien of the attachment herein.

(Signed) HOYT H. WHEELER.

(Endorsed:) U. S. circuit court, southern district of N. Y. Fanny D. Wylie ag'st The Northampton National Bank. Order modifying stay of proceedings. Peckham & Tyler, def't's att'ys, 111 B'dway, N. Y. U. S. circuit court. Filed Jan. 31, 1883. Joseph M. Deuel, clerk.

93 Circuit Court of the United States for the Southern District of New York.

FANNY D. WYLIE *ag'st* THE NORTHAMPTON NATIONAL BANK.

This action having originally been commenced in the superior court of the city of New York, and thereafter duly removed to this court, and said action having been tried by the court and a jury, and the jury having, by direction of the court, rendered a verdict in favor of the defendant, and the costs having been taxed at one hundred and nine dollars and sixty-eight cents, now, on motion of Peckham & Tyler, defendant's attorneys, it is hereby adjudged that the complaint herein be dismissed upon the merits; that the defendant go without day, and that the Northampton National Bank,
94 the defendant, recover of Fanny D. Wylie, the plaintiff, the sum of one hundred and nine dollars and sixty eight cents for its costs and disbursements herein, and that the defendant have execution therefor.

Dated January 31st, 1883.

Judgment signed this 31st day of January, A. D. 1883.
(Signed) JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed over all:) U. S. C. C., S. D. N. Y. Fanny D. Wylie *vs.* The Northampton National Bank. Judgment roll. U. S. circuit court. Filed Jan. 31, 1883, 3.35 p. m. Joseph M. Deuel, clerk.

95 The people of the State of New York to the sheriff of the city and county of New York, Greeting:

Whereas an application has been made to the judge granting this warrant by Fanny D. Wylie, plaintiff, for a warrant of attachment against the property of the Northampton National Bank, defendant in an action in the superior court of the city of New York, and it appearing by affidavit to the satisfaction of the judge granting this warrant that one of the causes of action specified in section 635 of the Code of Civil Proceedure exists against the defendant to recover a sum of money only, to wit, the sum of ten thousand and one hundred dollars and eighty cents as damages for breach of contract, express or implied, other than a contract to marry; and the
96 affidavits showing that a cause of action therefor exists against said defendant in favor of the plaintiff for the sum stated in the affidavit of ten thousand and one hundred dollars and eighty cents, and interest from the 26th day of January, 1882; that the defendant is a foreign corporation and is a non-resident of the State of New York; and the plaintiff having also given the undertaking required by law, now you are hereby commanded to attach and safely keep so much of the property within your county which the defendant, The Northampton National Bank, has, or which *he* may have, at any time before final judgment in the action, as will satisfy plaintiff's demand of ten thousand and one hundred dollars and eighty cents, together with costs and expenses, and that
97 you proceed herein in the manner required of you by law.

Witness the Hon. John Sedgwick, chief judge, at the court-house in the city of New York, this 26th day of January in the year 1882.

WM. H. ARNOUX, *J.*

HOLMES & ADAMS,
Pl'ff's Att'ys.

I hereby certify that the foregoing is a true copy of a warrant in my hands for service, and that I have attached the sum of $12,000 thereunder to secure the claim of the plaintiff therein.

Dated N. Y., April 17, 1882.
(S'g'd) PETER BOWE, *Sheriff,*
Per WILLIAM F. SCHNEIEDER,
Deputy Sheriff.

(Endorsed:) N. Y. superior court. Fanny D. Wylie *ay'st*
98 The Northampton National Bank. Certified copy. Warrant of attachment. U. S. circuit court. Filed Apr. 17, 1882. Joseph M. Deuel, clerk.

99 *Bill of Exceptions Filed at the October Term of said Court, A. D. 1882, upon the Trial to the Jury of the Above-entitled Cause.*

United States Circuit Court for the Southern District of New York.

FANNY D. WYLIE *vs.* THE NORTHAMPTON NATIONAL BANK.

Be it remembered that in the trial of the above-entitled cause the plaintiff excepted to the ruling of this court instructing and directing the jury to render a verdict for the defendant, and to such ruling and direction the plaintiff then and there duly excepted, and files this her bill of exceptions.

The evidence offered by the plaintiff tended to show the following facts:

100 In January, 1876, the plaintiff, then unmarried, resided at Northampton, Massachusetts, and on the 26th and 27th days of January, 1876, had a deposit in the Northampton National Bank for safe keeping — eight first-mortgage bonds of the Pacific railroad of Missouri for $1,000 each, and each then having attached to it coupons or interest warrants for $30 each, representing the semi-annual interest falling due on the same, and payable on the first days of February and August in each and every year until the maturity of the bonds, which would be in 1888.

On the night of the 26th and 27th of January, 1876, the bank was entered by burglars and property consisting of money and securities and evidences of indebtedness amounting in par value to

101 about $1,600,000 was stolen therefrom, including a large amount of property belonging to the bank and the plaintiff's eight bonds and coupons. Plaintiff's bonds were kept by the bank as a favor to plaintiff, without profit or compensation for the keeping to the bank.

Plaintiff heretofore brought various suits against other parties—one suit for four of the bonds, and other suits for various coupons sued on in the cause at bar. In this suit plaintiff sued for eight bonds and attached $12,000 in New York on the ground that defendant was a foreign corporation. In a replevin suit brought prior to this suit she recovered from Postmaster Pierson four of the eight bonds here sued on (and some of their coupons). She received the bonds in replevin prior to this suit upon the usual undertaking in replevin, but did not get judgment until after this suit was commenced. Plaintiff also sued the following parties for coupons

102 of her Missouri Pacific bonds, viz.: The Speyers, The First National Bank, The Missouri Pacific (the maker of the bonds), Kuanth, Nachod & Kuhne, and the Seligmans. The Seligman suit is still pending. From the Speyers she recovered about $1,000. In all the other cases (except Seligman's) she has recovered. Plaintiff also recovered $2,200 worth of her Connecticut river stock stolen in the robery. Plaintiff at the trial did not claim to recover in this action for any bonds or coupons recovered in the other action as aforesaid. Besides the plaintiff's bonds, other bonds and securities to a large amount belonging to the customers of the bank were likewise deposited in said bank for safe

keeping and were stolen at the same time. The plaintiff, prior to said robbery, and subsequent thereto, was a depositor and cus-
103 tomer of said bank, keeping therein deposits of her money.

Plaintiff testified that she considers the officers of the defendant honorable men and in good repute in their community, and that whenever she has banking business in Northampton she does it to this day with defendant. Her only brother, she says, and others of her relatives are regular depositors with defendant to this day.

Five other witnesses of the plaintiff (all who testified from personal knowledge) testified that the officers of the defendant were faithful, reputable, and diligent men, and that the officers showed zeal, diligence, and ability in prosecuting the thieves and recovering the stolen property; and Hinckley testified that the officers of the defendant bank followed every clew.

Detective PINKERTON, called by plaintiff, testified:

In my experience I never knew a bank that worked as hard
104 to get the thieves to recover all the property of this bank.

After the robbery some effort was made by the bank or its officers for the recovery of the property so stolen, and about four weeks thereafter the officers and directors of the bank caused a meeting to be held at the bank of some of the losers by the robbery, including those who were depositors for safe keeping like the plaintiff. The plaintiff did not attend this meeting or any other meeting of the kind, and there is no proof that she was represented at any such meeting.

Dr. WYLIE testified as follows:

Q. When do you say that the bank undertook to get back your wife's bonds?

A. Well, the first thing I heard about it I supposed they were doing it then; the very first time I heard anything about the robbery.

Q. Then you cannot fix anything of your own knowledge
105 when the bank originally undertook to get back your wife's bonds?

A. I should judge from the time the robbery took place almost.

Q. Can you fix any date of your own knowledge when the bank undertook to get your wife's bonds back?

A. I know at least only from other persons that there was a meeting three weeks after. Plaintiff's marriage occurred in June, 1877.

At this meeting all, or nearly all, of the directors and officers of the bank were present, and it was, among other things, proposed on the part of such depositors that a committee should be appointed to take measures for the recovery of the property stolen and the apprehension of the robbers, and that such committee should consist of three members, who should be connected with the bank officially, and three who should not be so connected, but should be selected
106 from those losers who had been depositors for safe keeping. A resolution to this effect was finally assented to by the

officers of the bank, but was voted down by those present, and the whole matter was left as before. Subsequent to this time the bank continued in its efforts to recover the property so stolen, and in that respect a number of its officers and agents made efforts and took part in negotiations as well in behalf of the other losers as for itself. Some of the losers worked alone for the recovery of their property; others negotiated or prosecuted by their own method, and also in connection with the bank's agents. The State of Massachusetts, by its attorney general, had charge of the continuing and discontinuing of the criminal prosecutions. The court, with the attorney general's approval, ordered the discharge of Leary, Draper, and Connor in 1881.

Upon the marriage of the plaintiff, Dr. W. Gill Wylie, in
107 June, 1877, the latter was by her authorized to act for her in the matters hereinafter specified.

In the summer of 1877, at New York, Dr. Wylie was informed by a patient of his that the latter was on familiar terms with a sister of the wife of Scott, one of the burglars then under indictment and in prison at Northampton, and could get at Mrs. Scott and could get back the plaintiff's bonds if the doctor would commission him to do so. At this time Dr. Wylie did not act upon this suggestion, for the reason, as he now states it, that he was under the impression that the bank was acting for his wife in proceedings for recovery of her property. Shortly after (and in the fall of 1877) he went to Northampton and told Mr. Warriner, the vice-president of the bank, of this proposition as to Mrs. Scott, and that he (Wylie) thought he could get his wife's bonds back by offering a reward, and that
108 he did not feel at liberty to act without first consulting the bank. Wylie testified that Warriner then told him that it would not be fair to other losers to negotiate independently, and requested Wylie not to do so and not to offer rewards or negotiate for the securities independently of the bank, stating that the bank was negotiating to get the securities back. To this request Wylie acceded, and answered that he would do as requested. In 1879 Mr. Warriner still advised Dr. Wylie against that course, and said that it would be unfair to other losers, but said that the losers could take any course that they wished; the bank would not object.

Wylie thereafter did not offer a reward for the recovery of the plaintiff's bonds, except that in 1879 he authorized the offer of a reward in Europe when certain of his bonds were there sold in open market, as appears hereafter.

109 In January, 1878, Wylie learned from the reports in the newspapers that one of the directors of the bank had recovered $25,000 of Union Pacific bonds, which had been stolen at the same time, and thereupon wrote to Hinckley asking him for information, to which Hinckley answered that he had obtained the bonds through a respectable party in Northampton, and had no information to give.

In due course, after its date, Wylie, at New York, received the following letter from Hinckley:

NORTHAMPTON, MASS., *Feb'y 9th*, 1878.

Dr. W. Gill Wylie, 40 W. 40th street, New York city.

MY DEAR SIR: Refering to our correspondence of 8th ulto., it has occurred to some of our directors that we have no right to use the funds of the stockholders of the bank for the benefit of the
110 special depositors, losers by the robbery, without some guarantee that they will be repaid. We presume all who recover their property will be willing to pay their fair share, but, inasmuch as the point has been raised, we have thought best to get the signatures of the depositors to an agreement to that effect, so that in case we have to act promptly, we can do so without risk. I enclose copy of the agreement, which has been signed by myself and a large majority of the losers, a few more of whom are yet to be seen. If it meets your approval, will you and Mrs. Wylie sign it and return it to me?

With kind regards to Mrs. Wylie, I remain very truly yours,

HENRY B. HINCKLEY.

In Hinckley's letter of February 9th, 1879, was enclosed a paper, as follows:

NEW YORK, *March* 2, '78.

111 NORTHAMPTON, *February*, 1878.

We whose names follow having suffered the loss of securities by the robbery of the Northampton National Bank in January, 1876, hereby agree to pay a *pro rata* proportion of the expenses incurred in obtaining them and returning them to us.

FANNY D. WYLIE
W. GILL WYLIE.

Subsequent thereto and in due course Wylie received the following letter:

"NORTHAMPTON, MASS., *Feb.* 27, '78.

"Dr. W. Gill Wylie, New York, N. Y.

"DEAR SIR: Having received no reply to my letter of the 9th inst., I write you again, at the request of Messrs. Warriner & Edwards. Mr. Charles Damon told me the other day that you objected to the form of the paper I sent you. It was written by Mr. Warriner, and I supposed was a copy of the original paper signed by most
112 of the parties here. The enclosed, w'h he handed me yesterday, he says is an exact copy of it. We have every reason to suppose that the Government bonds have been disposed of. The U. P.'s, $25,000, I got last Oct., through an outside party. But the balance, we think, on pretty good grounds, is all together, and can be got cheaper in bulk than in detail. We have strong hopes of being able to effect a negotiation at no distant day, and would like to make one clean job of it.

"Please let us hear from you.

"Yours, truly,

"HENRY R. HINCKLEY."

Thereupon, and about March 2nd, 1878, Wylie sent to Mr. Hinckley the following paper signed by himself and the plaintiff. This was the same paper which had been sent to Wylie for signature in the letter of Mr. Hinckley referred to above.

113 With this agreement was sent the following letter:

FORTY WEST 40TH STREET, *March 2nd*, 1878.

Henry R. Hinckley.

DEAR SIR: I am sorry your second letter has gone unanswered so long, but I have not had my clothes off for the past two nights and have not had time to write.

After the receipt of your first letter I expected to be in Northampton to see about the lost bonds of my wife, but did not get away. I am afraid Mr. Damon did not get things exactly straight in his short talk with you.

I agree with you that the lost securities ought to be bargained for all at once and not in detail and the sense of the propriety of all working together has certainly kept me from trying to get the bonds by my own efforts.

114 I will say frankly that it is my opinion that if the losers (of large amounts at least) were to be consulted as to what they are willing to pay and informed beforehand what terms are offered the final result of the negotiations would be likely to give more general satisfaction.

Inclosed you will find the agreement signed by Mrs. Wylie and myself. My objection to signing this is the want of definiteness as to what may be included under the term expenses incurred. My reasons for signing it are my inability to leave N. Y. even for a day and my belief that any transaction in which you take part will be just and fair.

Yours, sincerely,

W. GILL WYLIE.

Mr. Hinckley recovered his bonds in October, 1877. The Wylies first opened a written correspondence with any one connected with the bank when Wylie wrote to Hinckley in January, 1878.

115 The plaintiff read Hinckley's testimony. Hinckley's loss was of property belonging to himself individually or as trustee to private parties.

Ex. 1.

40 WEST FORTIETH STREET, *March* 20, 1881.

Mr. Warrener.

DEAR SIR: A short time since Lagrave was arrested in Paris, but the stolen bonds could not be found. He said that they had been sent back to the United States. No more coupons have been presented for payment, and I think the bonds are still in the hands of the thieves who stole them. I understand that a compromise has been or is to be effected. We, of course, expect Mrs. Wylie's bonds will be included in any compromise or settlement. Some of

116 my friends advised me to offer a reward for the bonds, but I

felt satisfied they must be in the hands of the original thieves, and after the trouble we gave Lagrave it would not be easy to get any one to negotiate them.

I will be glad to hear from you about the matter.

Yours sincerely,

W. GILL WYLIE.

"Ex. 2."

40 WEST 40TH ST., *Jan'y 20th*, 1879.

Mr. James Warriner.

DEAR SIR: We have found that thirty-six coupons from six of the eight Missouri Pacific bonds have been presented. We managed to get out an injunction before the money was paid. The coupons were presented by Speyer & Co., who said they had received them from their branch house at Frankfort-on-the-Main, Germany.
117 We expect soon to bring suit to recover the money, and wish to prove our case, and to do so it is necessary to have a statement of the purchase and transfer of the bonds; also, a sworn statement that the bonds were in the bank for safe keeping on the night of the robbery. I am impressed with the idea that my name was written on each bond. Can you tell me if this is true? If so, please make statement to that effect Please send me several of your printed circulars of the stolen securities. I would like to receive an answer as soon as possible, as I don't know at what time I shall need this information.

Very truly yours,

FANNY D. WYLIE.

In January, 1879, 36 coupons cut from 6 of the plaintiff's bonds were presented to the Pacific R. R. Co., in New York, for payment by Speyer & Co., bankers of that city, representing Lazard,
118 Speyer [&] Ellison, bankers in Frankfort, Germany.

Notice of this presentation was at once given to Wylie by the R. R. Co., and to prevent the payment of the same or transmission abroad of the proceeds plaintiff brought suit against Speyer & Co. and recovered the value of these coupons. These coupons had been purchased in Frankfort under the following circumstances: In December, 1878, a stranger calling himself Worth and stopping at a hotel there offered the coupons for sale with some other securities, representing himself to be an American traveller, and that the coupons belonged to bonds which were the property of an estate which had been for some years in litigation, the litigation being lately closed and the securities set free. To other persons in Frankfort, Seligman & Co., at about the same time Worth sold the six bonds with the unmatured coupons and at once disap-
119 peared.

The following are extracts from the complaint put in evidence, which was sworn to by this plaintiff in this plaintiff's suit against the Speyers, viz:

First. That soon after the said burglary was committed a particular description of said bonds, and of all securities so stolen, was ad-

vertised in public newspapers and otherwise extensively in this country and Europe. A description was extensively circulated in all principal cities and banks in this country and Europe.

Second. The plaintiff, soon after said burglary and long prior thereto, duly notified said Missouri Pacific railroad of the ownership of said bonds and coupons, of said burglary, and of said bonds and coupons as aforesaid, and of their descriptions and numbers as aforesaid.

Third. That said burglary was one of the most notorious
120 for years; that plaintiff is informed and believes that notices of said burglary were extensively circulated in this country and Europe, and a particular description of all securities, including those hereinabove mentioned, given, with the numbers, was advertised in public print and by circulars distributed in the principal cities and banking houses in this country and Europe, and, upon information and belief, that on or about the 29th day of February, 1876, the firm of Speyer & Co. were served with a list of said stolen securities, including bonds and coupons of the plaintiff herein.

Fourth. That said Speyer & Co. were and are chargeable with notice that the same came not rightly or lawfully into their possession.

The judgment-roll in said suit of this plaintiff against Speyer *et al.* further shows that the court found, on motion of this plaintiff's attorneys, that due diligence had been used in notifying the
121 railway company, which was the maker of the bonds, and all bankers, &c., in Europe, including Speyer and other parties at Frankfort, of the loss of the plaintiff's bonds.

Dr. WYLIE testified as follows:

Q. Did you have information at the time you brought the Speyer suit, did you have any information as to how far this paper had been disseminated in this country or Europe?

A. Nothing, except the statement of the bank.

Q. What were they?

A. They simply wrote and said that they had sent notices out and that the notices had been telegraphed abroad, but they didn't, their letter explains. I could find no evidence.

Q. Then, it having appeared from the findings in the Speyer suit that notice had been given abroad of this robbery, I ask you the sources of your information upon which that finding was made.

A. So far as I had anything to do with it my information
122 came from the bank as to that it had been done.

Q. And you had no other information than that at that time?

A. I looked after it at that time, but could not find it.

Q. Did you rely upon such information in that respect as you got from the bank?

A. I supposed there was nothing else for me to do.

Q. Did you rely upon that?

A. Yes.

The plaintiff testified as follows:

Q. You say that you made oath to a paper that was shown to you; was that made upon your knowledge, upon such information as you had at that time?

A. The agreement, do you mean?

Q. No.

Q. (Repeated.)

A. The information at that time.

Q. From whom had you received that information; do you remember?

A. No; I don't know that I do.

Q. Do you know whether the statements of that complaint in the Speyer suit in that paper were made in your presence by me
123 or by your husband?

A. I think they were.

Q. By which you mean that the information upon which you made that complaint, so far as it was on information, was information received from your husband or from me?

A. Yes. North was an assumed name, the man being one Lagrave, proven to be a go-between for dealers in stolen bonds. After the proceedings begun against Speyer & Co. here, the purchasers from Lagrave in Frankfort took measures for the apprehension of Lagrave, and in the same year he was arrested at Cologne and taken to Frankfort and tried on the criminal charge of concealing stolen securities. This trial resulted in the discharge of Lagrave upon the ground that Frankfort was not the proper forum, and he again disappeared. At the time of his discharge, the bonds so purchased of him were forced back upon Lagrave by the purchasers. During these pro-
124 ceedings plaintiff was represented at Frankfort by a local lawyer, but Lagrave escaped from Frankfort after his discharge and the retransfer to him of the bonds.

Schuttenfels testifies that at Frankfort, in 1878, he bought six of the plaintiff's bonds at Frankfort from Lagrave, in good faith, for value. The plaintiff had counsel in New York, other counsel in Brooklyn, two counsel in Massachusetts, and counsel and a friend at Frankfort employed by her in the prosecution of this action and the other earlier proceedings in relation to her stolen bonds.

Reingamun, Mrs. Wylie's Frankfort lawyer, testifies that the plaintiff employed him as her counsel at Frankfort-on-Main on January 17, 1879.

He also testifies as follows:

My name is Paul Reingamun; age, 43 years; residence, Frankfort-on-the-Main; my occupation is that of a lawyer. I know Gus. tavus Speyer, George Speyer, W. B. Bonn, and Ignace Schuster-
125 "I had no transactions with said person. I saw Lagrave at his criminal trial, but did not speak with him. I had no such sale. He was arrested in Cologne, in June, 1879, by the police on complaint of Mr. Schottenfels. Nothing was done in my behalf against said person, but in behalf of Mrs. Wylie I commenced a civil suit against said person. I made no oath or deposition.

"Said person was criminally tried for having bought and sold certain stolen bonds and coupons and being suspected of having knowledge at the time of said purchase and sale that such bonds and coupons were stolen."

Firstly. This criminal prosecution ended with his acquittal, on January 13th, 1880, as the judges said that the right forum was not at Frankfort. Secondly. I commenced a suit against La Grave, demanding from him the bonds and coupons he had sold at Frankfort. The description of them is as follows: Eight Missouri
126 Pacific gold bonds, numbered respectively 588, 1322, 1640, 2184, 3083, 631, 5036, and 5886. The first six numbers contain bonds stolen from Mrs. Wylie, the last two not stolen from her. The coupons were of the same eight bonds, due February 1 and August 1 of the years 1876, 1877, and 1878—that is, forty-eight pieces, each of $30. The bonds were each $1,000 bonds. Thirdly. Mr. Schottenfels commenced also a suit against said person to compel him to buy back the six stolen bonds sold to said Schottenfels, which he had then sold to others. One of said bonds had been acquired by Messrs. Seligman and Stettheimer and seven by Messrs. Mandlebaum and Steinhardt, as I believe Mr. Schottenfels materially acted for these proprietors, who had demanded the same of him by threatening that if he, Schottenfels, would not make the suit for them they would go against him. Mr. Schottenfels' lawyer, in the interest of said Seligman, Stettheimer, and Mandlebaum and
127 Steinhardt, arranged immediately with Lagrave that said Lagrave took back the bonds, paying for them with money and United States bonds, which had been found in his, Lagrave's, possession and were in the hands of the police. All this came to my knowledge after Lagrave had left Frankfort, which he did immediately afte having made said arrangement. Fourthly. Mr. Gumpertz commenced a suit against Lagrave to compel him to buy back the thirty-six coupons of the stolen bonds, which had been sold directly to said Gumpertz by Lagrave, but as far as I know Gumpertz had no success in consequence of the manœvre described in subdivision No. 3 of this answer between Lagrave and Schottenfels' lawyer.

Reinganun was instructed by plaintiff to attach her bonds, but did not do so. Seligman & Speyers, New York houses, had been personally notified in 1876 that plaintiff's bonds had been
128 stolen. Dr. Wylie sent telegrams abroad as early as January, 1879, notifying bankers about the theft of these bonds, and testified as follows:

Q. Did you follow up or attempt to follow up the bonds from the appearance of the coupons?

A. Well, how do you mean follow up? I have done all I could. I had arrested Lagrave the second time in Paris; that is, after he was arrested at Frankfort and had him searched. Afterwards and on two occasions 3 coupons from plaintiff's said bonds were presented by respectable bankers for payment, and on notice of the same to plaintiff by the R. R. Co. were replevied and recovered by the plaintiff.

Subsequent to the commencement of this action, as appears by replication herein, the plaintiff recovered four of said bonds sued for in this action, with coupons attached, maturing subsequent to the February coupon of 1881, under the following circumstances:

129 A registered letter was mailed at New York, addressed to one Gray in London. Gray not being found, the package was returned by the English post-office to the U. S. dead-letter office, when it was opened, and found to contain four Missouri Pacific R. R. bonds. The package being returned to Pearson, postmaster at New York, the latter failed to find the person who registered the package, his address given proving to have been a false one. Upon the postmaster's enquiry, it was discovered that the four bonds were part of those stolen at the bank, and, on enquiry made, the bank notified the postmaster and plaintiff to that effect. A replevin was brought by the plaintiff against the postmaster for the bonds, [and] was sustained by this circuit court. These 4 bonds were replevied and suit begun on them before this suit at bar was begun.

After the appearance of the 36 coupons in January, 1879, the following correspondence took place:

NORTHAMPTON NATIONAL BANK,
NORTHAMPTON, MASS., *Jan'y 21st*, 1879.

Dr. W. Gill Wylie.

130 DEAR SIR: The matter of Mrs. Wylie's ownership of the Mo. Pacific bonds can be proved beyond question.

We purchased the bonds for her from Mess. Clark, Dodge & Co., Wall street, on or about Jan'y 5, 1875, and received the money from Mrs. W. (then Miss Damon) in payment for them. If we can serve you in any way of affidavits or otherwise let us know.

Yours truly,

J. L. WARRINER, *V. P.*

(Over.)

Your second telegram just received. The bonds were coupon bonds, not registered, and consequently no name would appear on them.

J. L. W.

The bonds can be fully identified as Mrs. Wylie's by the numbers.

NORTHAMPTON, MASS., *Feb'y* 6, 1879.

Dr. W. Gill Wylie, 40 W. 40th st., New York.

131 MY DEAR SIR: I have just returned from a week's absence and find a letter from you to the Northampton Nat'l Bank, some expressions in which pain me as implying that I have taken advantage of my position as director in the bank to better myself in the negotiations of my stolen securities to the disadvantage of yourself and other losers.

I am confident when you come to learn all the circumstances you will be convinced that I have done nothing to forfeit your esteem. The facts are briefly these:

Soon after the conviction of Dunlap & Scott, but before the mo-

tion for new trial on exceptions was argued, Bond told Mr. Edwards that D. & S. had separated $100,000 of the best of the bonds from the main lot before their arrest, and borrowed money on them; that on payment of $8,000 we could get the whole. We concluded
132 that it was best to do this, and Bond went down with the $8,000, but returned bringing the c'k with him, saying the parties in New York would not agree to it.

Early in October he notified Mr. Edwards that the holders of $25,000 U. P. R. R. S. F. b'ds were getting impatient for their money, and that unless they could get $6,000 for them they would send them abroad. This was such an advance in price from the first proposition that I at first indignantly refused (N. B.) I was the only loser of that particular class of bond, which was known to Mr. Edwards; so it was that fact, and not because I was a bank director, that gave me the opportunity to negotiate.

After sleeping on the proposition and further conversation with Mr. Edwards we concluded that it was better for all parties for me to accept the proposition; so I gave Bond a cheque for $6,000, and a few days after he brought the $25,000 U. P.'s with their
133 back coupons. Bond was very urgent that his name should not be mentioned in the matter, saying he would help us all he could, and he could best do it if public attention were not drawn to him. Dunlap & Scott, who were still in jail expecting a new trial, expressed themselves as very much chagrined at the course their friends were taking, thinking it might prejudice their interests with the court in granting a new trial.

Mr. Edwards had frequent interviews with them, and they always told him that all they wanted was their liberty, and if they got a new trial and we did not hound them with Pinkerton we should have all our stolen property, including the $75,000, which they thought they could control if they were once out of prison. The U. S. coupon b'ds were the only exception to this, they claiming to have sold them immediately after the robbery.

134 It was thought best for all parties in and out of prison that I should keep mum about the U. P. transaction; so I looked up my bonds and coupons from October until after the first June, 1878, when, D. & S. having been sentenced to State's prison, I did not see that anybody was going to be benefited by my going without my income. I went to see D. & S. the Sunday evening *the Sunday evening* before they were sent to Boston and talked with them a couple of hours. It was the only time I ever did talk with either of them. They were very much dejected, and said they were afraid the $75,000 in the hands of their friends would prevent their ever getting their liberty. I endorsed this opinion, as I wished them to use what influence they had to keep it together. After I had collected my coupons, you wrote me Jan'y 8, '78, and I replied
135 January 9th, giving you briefly the facts, and concluding with the assurance, "If I learn of anything which can be of possible service to you I will not fail to write."

Now I do not see of what possible service it could have been to you to "give away" Bond. He was the only string we then had to

pull, and if we broke faith with him it might prevent any further negotiations.

We urged upon him the importance of trying to negotiate for the whole $100,000, but he told us he could do nothing; that the parties who held it would deal in their own way, or not at all. I have felt hardly towards Bond at times, but am inclined to think that he did the best he could for us. No one unaccustomed to the thieves can form any idea of their way of looking at things, and I do not think Bond was the kind of man that could influence them in the least. Some time afterwards, I don't recollect when, Bond
136 went down to Boston, to visit his clients, and brought a message from them to the effect that I could have the balance of my U. P.'s $19,000 by paying $10,000 for them. I was very angry at this, and told Bond that his clients were too sharp; that when I had men by the throat I did not allow them to dictate terms to me; that if they did not abate their demands I would use all my exertions to keep them where they were. He replied that D. & S. were painfully aware of that, and on that account were exceedingly anxious to have the matter settled; that the bonds were beyond their control; that this was the best that could be done, and unless I had some better way of getting back my property I had better accede to the proposition. After consultation with Mr. Edwards, I at length gave him half the amount he demanded, $5,000, and he went to New York, with instructions to negotiate for the whole $75,000 if he could.

137 He telegraphed me next day for the other $5,000. I telegraphed back, "Not another dime." He returned in due time, returned me my money, saying he could do nothing with them.

The result shows he was right. I lost my $19.000 U. P.'s, which have been negotiated abroad like your P. R. R. of Missouri b'ds. If I had come to their terms it is possible that they might have approached us with the other bonds, but there is no knowing. I acted according to my best judgment. I then thought I had encouraged them to drive a hard bargain with us by paying the $6,000 for the $25,000, and that they would grow more and more outrageous, and until the recent developments have cherished a hope that when they got hard up they would again approach us with more moderate proposals.

We now considered Bond "a dead horse," of use to nobody.

Early in February we were approached by another party,
138 a man well known in political circles, who said he had been approached by parties who were in communication with the holders of all of the balance of the stolen property excepting the coupon governments, and that if we could agree on terms he could get it back for us. We were very much surprised at this, as we had always believed that Dunlap & Scott told us the truth when they said that they and nobody else knew where the bulk of the property was hidden.

Our party, however, was so positive and had such great names back of him that we agreed to put the matter into his hands, with

the understanding that he was to be paid a moderate sum, say, $5,000, if successful, and not one cent if unsuccessful. He went to work, arranged an interview with D. & S., who sent him away with a flea in his ear. They said they would have nothing to do with any d—d thieves: that if the bank folks wanted their property they
139 must come to them, and as nothing further came of it we may conclude D. & S. were right, and nobody but they can deliver up the property. It was pending this last negotiation that I wrote you, Feb'y 9th, 1878, enclosing form of agreement for you to sign, agreeing to pay your share of expense in recovering the property. The bank positively refused to assume the risk of the depositors refusing to pay. Last Friday, while in Boston, I was notified that 3 years' coupons on 5 of my stolen U. P.'s had been presented by the Merchants' Bank and payment refused, in accordance with my instructions. I at once got a lawyer and replevied the coupons from the bank and gave them a bond of indemnity. I have got the coupons in my possession, but have been so busy with other matters that I have not had time to do anything further.

I understand the case will come to trial next October. I
140 was in New York on Monday and Tuesday and tried to call upon you, but other engagements prevented. I most sincerely hope you may be successful in the recovery of your property.

If there is any point on which I have not made myself clear I beg that you will be free and cross-examine me. I have nothing to conceal.

With kind remembrances to Mrs. Wylie, I am, very sincerely, yours,

HENRY R. HINCKLEY.

It is better to keep all this out of the papers.

NORTHAMPTON, MASS., *May* 10, 1879.

Dr. W. Gill Wylie, 40 W. 40th St., New York.

DEAR SIR: Your letter of the 7th inst. was received while I was in bed. I am about for the first time to-day, and hasten to answer it, for it relates to me personally.

You claim that my paying the $6,000 for the $25,000 U. P. was the means of enabling E. P. North to take your Missouri
141 Pacifics, and quote the New York police as your authority.

Now, I, for one, do not believe that the New York police knew anything about the matter.

This I do know, that I got my bonds in October, 1877, and that no part of the $75,000 left the country until some time in 1878, after I had refused to pay $10,000 for the balance, $19,000, of my U. P.'s. It was my refusing to pay that sent them abroad. If I had accepted the offer I have no doubt we could have got the whole $75,000 at 50% of the market value.

You say, "If I had written as fully last spring as I have this you would have made a move, but you forget that much of which I wrote this spring took place after our correspondence in Feb'y, 1878, and before my letter of Feb'y, 1879.

I do not know what information I could have given you in 1878, that would have been of any service to you, except to give you Bond's name, and as he was doing his best to get everything back for all of us if you had proceeded against him, as you imply you
142 would have done had you known what he was about, you not only would have gained nothing, but would have effectually blocked the game for anybody.

I moreover gave my word that I would not mention his name in connection with the affair, and should never have done so had not the fact leaked out through their channels, so that it was no longer a secret.

I wrote you Feb'y, '79, to exculpate myself, the charge that I had used my position as bank director to better myself at the expense of other losers.

Now, this Union Pacific matter is my affair solely. The bank had nothing to do with it. None of the directors or the cashier knew anything about it until the whole matter was made public. Mr. Edwards and Mr. Warriner, as my friends and not as bank officers, were consulted. The offer was a specific one for $25,000, U. P. S. F. b'ds. It came from the thieves, not from me
143 or any one in my interest. If the other had been to return the Missouri Pacifics, you would have been notified, and not I. Every effort was made to induce the holders to name a price at which they would return the $100,000, but to no purpose, although I have good reason to believe that if I had accepted the second offer of 50% of the market value, something might have been none. As to the position of the bank with regard to yourself, I have no authority to speak. I have handed in your letter to Mr. Warriner, as you request. I hope to see you personally before long, and can, perhaps, better explain anything I have not made clear.

In haste, sincerely yours,

HENRY R. HINCKLEY.

144 Ex. 4.

NEW YORK, *March* 2, '78.

NORTHAMPTON, *February*, 1878.

We whose names follow having suffered the loss of securities by the robbery of the Northampton National Bank, in January, 1876, hereby agree to pay a *pro rata* proportion of the expenses incurred in obtaining them and returning them to us.

FANNIE D. WYLIE.
W. GILL WYLIE.

EXHIBIT 5.

NEW YORK, 40 W. 40TH STREET, *Jan'y 8th*, 1878.

Mr. Henry R. Hinckley.

DEAR SIR: I see by to-day's Tribune that you have recovered some of your stolen bonds. The bonds of my wife that were stolen at the same time as yours were first-m. 6 per cent. gold Missouri

Pacific R. R. bonds, and it occurred to me that as they
145 are above par, they may have been among the $100.000 collateral. Can you give me any information about them, or a hint how to go about getting at them; if you can you will greatly oblige,

Yours sincerely,

W. GILL WYLIE.

P. S.—Mrs. Wylie sends her kind regards to G. W.

EXHIBIT C.

40 WEST 40TH ST., *March 2nd*, 1878.

Mr. Henry R. Hinckley.

DEAR SIR: I am sorry your second letter has gone unanswered so long, but I have not had my clothes off for the past two nights and have not had time to write.

After the receipt of your first letter I expected to be in Northampton to see about the lost bonds of my wife, but did not get away. I am afraid Mr. Damon did not get things exactly straight in his short talk with you.

146 I agree with you that the lost securities ought to be bargained for all at once and not in detail, and the sense of the propriety of all working together has certainly kept me from trying to get the bonds by my own efforts.

I will say frankly that it is my opinion if the losers (of large amounts at least) were to be consulted as to what they are willing to pay, and informed beforehand what terms are offered, the final result of the negotiations would be likely to give more general satisfaction.

Enclosed you will find the agreement, signed by Mrs. Wylie and myself. My objection to signing this is the want of definiteness as to what may be included under the term "expenses incurred." My reasons for signing it are my inability to leave N. Y., even for a day, and my belief that any transaction in which you take part will be just and fair.

Yours, sincerely,

W. GILL WYLIE.

147 EXHIBIT 18.

40 WEST 40TH STREET, *March 26th*, 1881.

MY DEAR MR. WARRENER: I am much obliged for your letter about the bonds; you made a very good haul. I suppose you will make the loss (*pro rata*) fall upon all, and include the actual expense, &c.—that is, hold back a portion of the property secured, &c. Mrs. Wylie's bonds were advertised abroad, but, except that formal notices were sent to all the banks or exchanges and notices put in at least one paper of each country, I know very little. I think it would be advisable to have bonds advertised abroad particularly, for no notice had reached the Franfort Exchange when Mrs. Wylie's bonds were sold there. I will be glad to do all I can to help in the matter. The Coudert Bro-. advised me to advertise and offer a

reward, but I'll wait until I hear from you. I have a letter
148 just at hand from Mr. G'd Wells about his father's bonds. Two other bonds were sold by Lagrave—6 of Mrs. Wylie's and two of Mr. Wells', I think. It is more than probable that these were also forced back on account of the steps I took about Mrs. Wylie's. I have already paid out $1,000, and have not yet finished suit with Speyer & Co. for the coupons.

Would like to hear from you about the *pro rata* and the question of advertising.

Yours sincerely,

W. GILL WYLIE.

Ex. 19.

NORTHAMPTON NATIONAL BANK,
NORTHAMPTON, MASS., *June* 14, 1879.

Messrs. Holmes & Adams.

GENTLEMEN: Yours of the 2nd inst. is rec'd, and contents noted. As we have no copy of the cablegrams forwarded by Kiernan's agency to Europe of the lost securities we are obliged to refer you to that agency for the particulars you desire. You have Mr.
149 Kiernan's letter, which will, I think, give you the date.

Yours, resp'y,

J. L. WARRENER, *V. P.*

Ex. 22.

HOUSE OF REPRESENTATIVES,
WASHINGTON, D. C., *Jan'y 17th*, 1882.

Dr. W. Gill Wylie, No. 40 W. 40th street, New York, N. Y.

DEAR SIR: Yours with check for $50 received. I have sent to the sheriff a demand on the bank for the missing bonds and coupons. As soon as the sheriff returns me the demand it will be time to begin the suit.

Now, upon careful consideration, I advise you to have the suit begun in New York. As the bank keeps an account there, it will be easy for you to compel its attendance on your courts. The feeling in Northampton is such and the influence of the bank is so wide throughout the country that I believe no jury could be got
150 that would agree on a verdict against the bank. Mr. Gaylord assured me that the bank's course was generally sustained in and about that vicinity. Your N. Y. juries would be entirely free from any such bias; besides, in beginning a suit in New York I take it you would not have to give security for costs, as non-resident plaintiffs must do in Massachusetts. Therefore, as soon as I have the demand back I will forward it to you, so that you may begin action before the 26th inst., when six years from the robbery will expire, though that is not probably material.

Yours, truly,

GEO. D. ROBINSON.

EXHIBIT 10.

NORTHAMPTON NATIONAL BANK,
Late Northampton Bank,
NORTHAMPTON, MASS., *Jan'y 28th*, 1879.

Dr. W. Gill Wylie.

151 DEAR SIR: We understood from one of Messrs. Holmes & Adams' letters that your case was to have been heard on the 25th inst., but having seen no report of it in the papers, conclude that it was again postponed.

Would it not be well, if it is decided against you, to carry it up on exceptions to the full bench N. Y. supreme court? This would, no doubt, have the effect of stopping the sale of the bonds, and also might result in a compromise on the part of the banking house in Frankfort, by which you might save a part of the amount. We should like to hear how the case now stands if you can find time to write a line.

Yours, truly,

J. L. WARRINER, *S. J. T.*

EXHIBIT 20.

152 Artemas H. Holmes. George H. Adams. Robert B. Holmes.

LAW OFFICES OF HOLMES & ADAMS, 120 BROADWAY,
NEW YORK, *January 21st*, 1879.

DEAR SIR: We are the attorneys for Mrs. Fanny D. Wylie, formerly Miss Damson, in a suit brought to collect 36 coupons of 6 of the bonds (1st m't'ge) of the Mo. Pac. R'y Co., being six of the eight bonds stolen from your bank in January, 1876. For the purposes of that action we desire to know from your bank all the circumstances of purchase and delivery by the bank, of whom and when purchased, when received and delivered, and a description of the 8 bonds; also, whether or not anything was written on the bonds, and, if yes, on what part of them, what and whether in ink or pencil. Please advise us what advertisement or notice of the theft was given, how and to whom, a copy of any circular, and a list of to whom and where and how the circular was sent. An immediate answer
153 will greatly oblige us, as a motion for the continuance of the injunction in the suit is set for the 25th inst., at which time we desire to make use of any information you may be able to give us. In Sunday's editon of the World, first page, top of 2nd or 3d column, you will find the circumstances out of which the suit grows detailed.

Yours, truly,

HOLMES & ADAMS.

Mr. Warrener, cashier, &c.

Ex. 21.

The circular contained a warning to "bankers, brokers and others" not to negotiate the plaintiff's bonds and other securities stolen at the robbery of the bank.

EXHIBIT 24.

Special deposit by —— —— in the Northampton National Bank of Northampton Mass., $——, in ——. The contents of this
154 package left by me as a special deposit entirely at my own risk, the Northampton National Bank being in no way responsible for it.

Northampton, Mass., —— —, 187—.

EXHIBIT 25.

To the Northampton National Bank, Northampton, Mass.:

I demand the return and delivery to me of four gold bonds of the Missouri Pacific Railroad Company, being numbered 137, 588, 641, 2877, each being in the denomination and for the sum of one thousand dollars, and also all the coupons belonging to said bonds for the interest on the same since January 1st, A. D. 1876, the same being my property left by me in your keeping, and I authorize the officer who shall serve this demand to receive said bonds and coupons in my behalf.

FANNY D. WYLIE,
By GEO. D. ROBINSON,
Her Attorney.

155 New York, N. Y., Jan'y 17th 1882.

Dr. Wylie testified in explanation of his letter of March, 1881, to Warriner that he claimed that the bonds not recovered should be assessed as so much expense on those recovered, and that plaintiff does not now charge defendant with having actually given her bonds to the thieves in the strict sense.

40 WEST 40TH STREET, *May 18th*, 1879.

Mr. James Warriner, vice-pres't N. Bank Northampton, Northampton, Mass.

DEAR SIR: I enclose you a copy of a letter that came yesterday from Frankfort O. M., Germany. It seems to me that something should be done to get at this man North. If he is not one of the Northampton robbers, he must have information about the bonds; and if he has not money or bonds to attach he might be
156 made to tell who has possession of what bonds are unsold, at least those taken to Europe.

I would like to know if the bank has dropped the management, for if they have I will at once take means to bring what knowledge I have on the subject to the notice of the losers by the robbery. If the best bonds are afloat and attempts are being made to put them on the market, the advertisement should be repeated, and especially in Europe should the bonds be advertised as stolen, since your efforts to accomplish that end seem to have so signally failed.

It is useless for me to make any suggestions if you do not intend to move it in the matter; but if you will let me know just what you intend to do, I will be better able to decide what steps I should

take to do my duty toward the other losers. I still hold that as the bank officers had the management of the recovery, &c., in
157 hand, and a bank officer advised others not to offer a reward for the recovery of their bonds, that Mr. Hinckley — wrong in paying a reward for his without giving information and allowing them the chance to recover theirs in the same way.

I don't see, under the circumstances, on what ground Mr. Hinckley claims to have asked as an individual and not as a director.

Yours truly,

W. GILL WYLIE.

NORTHAMPTON, MASS., *May* 20, 1879.

Dr. W. G. Wylie.

DEAR SIR: Your letter of the 17th inst. is rec'd & contents noted. You seem to have wholly forgotten that proofs of the publication of the loss of the Un. Pac. and other bonds by circulars issued immediately after the robbery, copies of which were served upon the banks
158 & bankers of our principal cities, the advertisement of the same in the N. Y. Daily Times & Tribune, Kiernan's letter stating that the same had been cabled to London and other financial centres of Europe, and our own affidavit were months ago placed in the hands of your attorneys, Holmes & Adams, who still have them. Those documents are exhaustive of the facts, as we believe.

We have no objections to losers by the robbery taking any steps they deem proper and best in the premises in their own behalf. At the time to which you refer we had the strongest reason for believing that the securities would be returned to us, but it proved that we were mistaken. Although we had signally failed in securing Connor & Leary, through the treachery or carelessness of officials in N. Y., we shall spare no effort to secure the return of the stolen property or that portion of it that may not have been scattered.
159 I think that when you can talk the matter over with Mr. Hinckley that the misapprehension you are laboring under will be removed.

Yours truly,

J. L. WARRINER, *V. P.*

NEW YORK, 40 WEST FORTIETH STREET,
April 22*nd*, 1881.

Mr. Oscar Edwards, pres. board of directors Northampton National Bank, Northampton, Mass.

MY DEAR SIR: I saw my Brooklyn lawyer to-day and he tells me that the burglars say that the bonds are in Europe and will have to be sent for. I have some other evidenc that leads me to think that the six sold by Lagrave at Frankfort are still in Europe, but the other two are in this country—that is, No-. 588, 641, 1322, 1640, 2184, 3083 are in Europe, and 1371 & 2877 are in this country. I was in hopes that the remainder of the coupon bonds would be
160 recovered and the matter be settled without further trouble. I wrote Mr. Warriner about the first of April, as soon as I had

the facts of the case, that I considered the bonds left in the hands of the thieves as just so much expense, or, in other words, so much of a reward for the return of the rest of the securities, and I now say that I hold those in charge (the bank directors) responsible for the value of the bonds and coupons less the rates of assessment made upon similar securities. I have been advised by counsel here in N. Y. to bring the matter into court, but before taking this step I thought it only fair to write and ask what the bank directors intend to do about making up the loss to those who did not get back their bonds.

The Hon. Geo. D. Robinson, of Chicopee, Mass., is my attorney in Mass. I would like very much to hear from you at your earliest convenience.

Yours truly,

161 W. GILL WYLIE,
For Mrs. Fanny D. Wylie.

NORTHAMPTON, MASS., *March* 25, 1881.

MY DEAR SIR: Y'rs 20th inst. came during my absence.

The stolen property has been returned except $115,000 of bonds and $12,000 bills of the bonds taken; $35,000 were U. S. coupon bonds, leaving still $80,000 out and among them all the 15 Missouri Pacific bonds. We are now getting out a new list of the stolen bonds, which will include Mrs. Wylie's. If you have any hints to give us as to the manner of advertising please write by return mail.

With my regards to Mrs. Wylie.

Yours very truly,

J. L. WARRINER, *V. P.*

W. Gill Wylie, M. D.

NORTHAMPTON, MASS., *June* 4, 1877.

Messrs. Holmes & Adams.

162 GENTLEMEN: Yours of the 2nd inst. is received & contents noted.

As we have no copy of the cablegrams forwarded by Kiernan's agency to Europe of the lost securities we are obliged to refer you to that agency for the particulars you desire.

You have Mr. Kiernan's letter, which will, I think, give you the date.

Yours very respectfully,

J. L. WARRINER, *V. P.*

NORTHAMPTON, MASS., *Feb'y* 8, 1879.

Messrs. Holmes & Adams.

GENTLEMEN: I enclose Messrs. Clark, Dodge & Co.'s letter confirming my affidavit that we purchased of them on or about Jan'y 5, '75, $8,000 Mo. Pacific R. R. bonds for Mrs. Wylie, then Miss Damon.

Yours respectfully,

J. L. WARRINER, *V. P.*

163 EXHIBIT 11.

40 WEST 40TH STREET, *January* 11*st*, 1879.

Mr. J. L. Warriner, vice-pres. Northampton Nat'l Bank.

DEAR SIR: Please excuse my delay in answering your letter. The question about continuing the injunction has been put off until Feb'y 10th, when it will be argued. We have very little doubt about having the injunction made permanent; and as all the 36 coupons were overdue paper, we expect to get possession of the $1,080. Judging from what you have written, and from the account in the Springfield Republican, I think I had better give you a full statement about the whole affair. Before Miss T. H. Damon became my wife, for certain reasons I did very little in regard to the stolen bonds. I went to the Bank of Commerce, where the coupons had been paid, and they referred me to C. K. Garrison's office (the office of
164 the Missouri Pacific R. R. Co.) Somewhat to my surprise I found that they knew nothing of the stolen bonds; had no list and were not on the lookout for the coupons. I had them to refer to their books, and discovered that coupons on the eight bonds had not been paid. I gave them due notice, and later brought them a letter from you stating some of the facts of the robbery. On two occasions I consulted you in regard to the propriety of making a move on my own account to recover the bonds by paying a reward. The last interview was in the fall of '77, after the trial of Scott & Dunlap. You may recollect; it was after banking hours, and I made known my wish thro' the window, and afterwards went into the bank and saw you. Your advice was to leave the matter to the bank, and I also concluded that it was not exactly fair for me to offer money to the burglars or their friends at that time. * * *
165 I have kept at the clerk in the R. R. office, but had not been there for two or three months. On Friday, about 1.45 p. m., I had a telegram from the R. R. office, merely asking me to call at my early convenience in regard to the lost bonds. I went at once. I there learned that Speyer & Co. had presented 36 of the coupons, six from each of 588, 641, 1322, 1640, 2184, and 3083. Nothing was seen of coupons of 137 and 2877. My first impulse was to get a lawyer, but Com. C. K. Garrison said Speyer & Co were straight, and would do what was right; so I went to their office, where I was very curtly received by a man at the desk and all the information refused until I had a respectable identification. I went immediately to Brown Bros., and returned at once to Speyer & Co. There, in a very formal way, after some delay, a paper was handed me, with the statement that that was the party from whom they had ob-
166 tained the coupons. On the paper was written Las Speyer Ellison, Frankfort-o-M., Germany. I saw that this was merely evasion, and went directly to the Missouri R. R. office, and arrived in time to see the coupons spread out by a public notary, who was ready to protect the R. R. Co. if payment was refused. By persistent protests and considerable talk I delayed matters till 5.30 p. m., when Speyer & Co. made formal demand, and a check was passed for the coupons. I stood by [and] saw the transaction, and, as soon as I

could get to one, was with a lawyer, and insisted on the injunction being obtained before 10 a. m. the next day, in order to stop the payment of the check; otherwise I knew that Speyer & Co. would buy exchange and ship the money to Europe at once. On Monday I went down to find some party in Frankfort
167 to telegraph to and fortunately my lawyer found that a lawyer friend of his was in Frankfort. A copy of the telegram, I think, was sent to you by Holmes. Of course Pinkerton was seen by me on Saturday, and other detectives also, but none had agencies abroad that could take up the matter. Since first telegram from Bretherton the day after we sent a long telegram signed by supt. of police. We received the following from Bretherton: "Six bonds found; police refuse (to) seize them. *Bona fide* purchasers. Result (of) lawsuit (would) probably be unfavorable. North sold Gumpertz overdue coupons separately. Clean (not marked) bonds. Bourse advertisements useless. Instruct."

In answer to the above we sent Bretherton: "Frankfort. Unless holders bring North strictly innocent purchaser full value, use vigorous methods; otherwise use judgment. Have written."
168 Since then nothing has been heard. I made a move to have the company stop payment, but find it difficult to bring the force of law to help me until I can place the present holders of the coupons. I have the promise of the officials that they will endeavor to detect them if presented, and they will refuse payment until I am notified. But the trouble is that on the first day so many thousand coupons are presented that it will be mere chance discovery of the six I am looking for. My object is to bring suit and delay payment until the question of innocent ownership is fully established by the present holders. This question will be of interest to all those who have lost negotiable securities, and should be pushed to the utmost limit, for if a thief can go to Europe and sell bonds and the buyer can collect interest in spite of the efforts of the real owner, there is not much prospect of any of the negotiable securities
169 being obtained much below their market value. I have already paid out $150.00 for telegrams and expect to pay my lawyers, and perhaps costs, too. I will go ahead, but may have to stop on suit about the Feb'y coupons, on account of uncertainty of cost and results.

If others interested would come into the case I will be very glad, of course. I found that at least two other bonds of the same R. R. Co. were in the hands of E. P. North, or E. P. Worth (so the N. Y. police say is a notorious go-between, and was suspected at the time of the burglary).

The six coupons from each were presented by Speyer & Co., and were paid by E. R. Garrison. I believe Fanny's bonds (eight) were the only bonds of the Missouri Pacific, but there were other bonds on the same company (the mere name being changed) printed on your list, and I have an idea that these overdue coupons
170 belonged to two of these bonds. I would have made sure of this, but R. R. men are very close and will not answer questions satisfactorily. I called at Clark, Dodge & Co., but their book-

keeper refused to verify the list, or, rather, the numbers of the eight bonds which you bought for my wife. He merely looked at his list of stolen bonds and said the eight numbers read out by me were there on that list, and that there were seven other numbers of bonds of Missouri P. R. R. on the same list as being stolen at Northampton; he evidently made no distinction in the change of the name. I think it would be well if the owner of the other set of bonds would look into the matter, for if they can prove that the company had notice they may get back the amount paid for the overdue coupons. I also think it would be well to make an effort to get a list of the good securities that were said to have been
171 put by Dunlap as a collateral security and have the list advertised and distributed, especially abroad. If this can't be had, to send new circulars of the old list. I wish you would send to Clark, Dodge & Co. and have them verify the list of Mrs. Wylie's bonds. It is possible some mistake was made in the two numbers 137 & 2877; they refused to look for others than their clients. The notary of the 3rd National Bank refused point blank to make a special affidavit about serving Speyer & Co. a circular. He is to be forced by the courts. Is Speyer & Co, 52 Exchange Place, on the list already sworn to? My telegram about the name on the bonds were sent because Fanny thought that her name had been put on the back of each. If this had been done, according to a special statute of this State, it would have been equivalent to registration of the bonds, altho' they were coupon bonds. The Boston police knew nothing of E. P. North. Have you any knowledge of E. P. North?

172 Yours truly,

W. GILL WYLIE.

In consequence of the letter of Warrener of June 4, '79, above enquiries were made by Dr. Wylie, of Kiernan's agency in New York, which is an agency for telegraphing news to foreign countries. He was informed by Kiernan that two gentlemen came to that office, saying that the bank had been robbed, and wanted to telegraph the news abroad. They stated the case and asked the cost, and finally decided to send news only that the robbery had taken place and that such a list of bonds had been stolen, but not the numbers; that there were some circulars; that the agency did not send any special notices of the robbery abroad except some circulars to London and a general cable, which did not cable the numbers of
173 the stolen bonds; that the agency did not send any circulars to Frankfort or the continent. At about the time the plaintiff signed the agreement dated March 2, 1878, similar agreements were presented to other losers for signature, and certain of such losers signed the same, and others refused to do so. Besides the methods of advertising the loss above referred to, various other methods had been used.

Q. Did you ever see the various circulars and advertisements that were sent around?

A. I saw one form of circular giving numbers of the bonds.

Q. Did you see any of these?

A. Yes; I think so.

Q. That was the circular referred to in the testimony as distributed in this country and Europe, was it not?

A. I suppose it is.

About 1876 or 1877 indictments were found in Massachusetts for the robbery of the bank against Scott, Dunlap, and Red Leary,
174 Shang Draper, and Connors. At about this time Scott & Dunlap were brought to trial on these indictments at Northampton, were convicted and sentenced to State prison for twenty years. One has since died in prison, and the other is still in prison under this sentence. The others under indictment had not been caught at the time of the trial of Scott & Dunlap. Draper was afterwards arrested and taken to Northampton, and held there for trial for about two years and a half under the indictments; about five or six months before the expiration of this period of two and a half years Leary and Conners were also arrested and taken to Northampton, and these held with Draper for trial under these indictments. The bank had reason to believe at and prior to this time that in the statements made to it by Dunlap and Scott, while they were in jail, that the latter alone had control of the stolen property with the exception of $100,000 of the best of the stolen
175 bonds, which Dunlap & Scott said they borrowed money on previous to their arrest. The bank brought all the influence it could to bear on Dunlap & Scott to persuade or frighten them into giving the property up without success, until they finally sent for one of the directors, and then stated that they had not the control of the property, but that Leary had. The bank then tried in every way to get into communication with Leary, and after a year caught him, and he was taken to Northampton, when Dunlap & Scott wrote him a letter telling him if he did not give up the stolen property to the losers they would come to Northamption and "down him," but that if he did give it up they would not harm a hair of his head. Soon after Conners was taken to Northampton the greater part of the stolen property was recovered. Hinckley, one of the directors, and the vice-president, Warrener, went to New York to a safe
176 deposit company there and brought it away. A little before or a little after this final recovery Conners, Leary, and Draper were all discharged at Northampton without trial. At one time prior to the final recovery Warrener, the vice-president, or some other officer of the bank, presented to one of the losers of the same class as plaintiff a form of agreement, with the request that he should sign it. This was in the shape of a letter addressed to Scott and Dunlap, at that time in State's prison, to the effect thatt he persons signing the letter would request the Governor and council, at such time as they should deem proper, to pardon these persons, the condition being that they should surrender, or cause to be surrendered, the property stolen from the bank. At the same time another paper was likewise presented with the same request for signature, addressed to the Governor and council.

177 The total amount of property stolen at this robbery was recovered, except about $12,000 in cash and from $70,000 to $80,000 par value of bonds and securities. Amongst the property recovered was the bulk of the negotiable coupon bonds stolen. All the non-negotiable bonds were recovered, and all the negotiable securities except about $80,000. This was in 1881. Of the $80,000 of the negotiable bonds which have never been recovered $26,000 belonged to Hinckley individually or as a trustee, and some of the balance of the $80,000 belonged to other officers of the bank or their families. The cash not recovered, $12,000, belonged entirely to the bank. Some of the losers, upon their receiving from the bank such of their securities as had been returned in the final recovery, paid to the bank, respectively, their proportion of the expenses incurred by the bank in the matter; plaintiff made no such contribution
178 at any time, and was not asked to. The director, Hinckley, who was examined as a witness testified, among other things, as follows:

Q. Was the final recovery of the stolen property made by you or through you, or by means of the negotiation you mention in your 1878 and 1879 letters to Wylie? Was the final recovery made by others than yourself, and by other means not mentioned in the 1878 and 1879 letters in evidence?

A. A final recovery was not made by or through me, and not by or through the means mentioned in the 1878 and 1879 letters to Wylie. Everything was futile until the final recovery.

* * * * * * *

[Q.] Did the bank officers or the bank, as claimed in the complaint, "allow and agree the plaintiff's bonds in suit to be retained by and released to" the thieves or any other person as a compensation or reward for the restoration of the remainder, or do anything of the kind?

179. A. No; of the coupons attached to said stolen bonds belonging to the plaintiff and maturing prior to the commencement of this action twenty-eight have never been recovered; these coupons were each for thirty dollars.

Dr. WYLIE testified as follows:

Q. Has Mrs. Wylie recovered anything but what is testified to, any of the bonds or any of the coupons?

A. No, sir; except that I have stated.

Q. Have you collected any of these coupons?

A. I collected one set of coupons from those four bonds that were recovered from Pearson.

Q. Did you ever receive anything less than $30 apiece for those coupons?

A. No.

Q. How lately do you know of the company having paid those coupons?

A. I think it was in August last.

Q. In August last they were then worth what apiece?

A. $30.

Q. Have you ever sold any of these 1st-mortgage bonds or
180 bonds of this class?

A. Yes.

Q. When?

A. I think it was in July; I think probably the coupons were collected in February; I sold these bonds, three, just before the coupons were due, in August.

Q. What did they sell for?

A. 108.

Q. At that price were there any over-due coupons attached to them, or were the unmatured cut off?

A. The matured were cut off; the value of the plaintiff's bonds in the complaint mentioned was on January 31st, in the year 1882, $1,080 for each bond with unmatured coupons only attached; of the plaintiff's bonds so stolen four have never been recovered by her.

At the close of the plaintiff's testimony plaintiff's counsel requested to go to the jury on the evidence in general as to whether the loss of the plaintiff's said bonds and coupons was attributable to the negligence of the defendant.

The court refused this request; to which refusal the plain-
181 tiff's counsel then and there duly excepted. Thereupon the plaintiff's counsel requested the court to submit to the jury whether the defendant had not, prior to the recovery by Hinckley of his $25,000 Union Pacific bonds, induced the plaintiff to desist from all negotiations for the recovery of her said bonds and coupons, and to leave all such negotiations to the defendant, and whether the defendant did not represent to the plaintiff that it was then negotiating and would negotiate for the return of all the said stolen property together, as well the plaintiff's as the bank's and other losers. The court refused this request; to which refusal the plaintiff's counsel then and there duly excepted. Thereupon the plaintiff's counsel requested the court to submit to the jury whether the plaintiff's said bonds and coupons were not part of the lot of $100,000 or $75,000 of securities mentioned in the
182 letters of Hinckley and Wylie above set forth, and whether said Hinckley's $25,000 Union Pacific bonds were not also a part of this lot; and whether the defendant did not negotiate, by the offering of rewards or other consideration, for the return of this lot. The court refused this request; to which plaintiff's counsel then and there duly excepted. Thereupon the plaintiff's counsel requested the court to submit to the jury whether the sending of the said lot, or any lot of said stolen securities, or the sending of plaintiff's said stolen bonds and coupons abroad by the thieves, or those then in possession of the same, was not attributable to the acts or omissions of the defendant as negligence. The court refused this request; to which the plaintiff's counsel then and there duly excepted. Thereupon the plaintiff's counsel requested the court to submit to the jury whether the defendant at
183 the time of the discharge of Connors, Leavy, and Draper from prison without trial, and at the time of the final recovery of

the securities and stolen property in 1880 did not enter into some bargain or arrangement with said persons or others not to prosecute said persons last named, in consideration of the restoration of said property, so as aforesaid returned in 1880, and whether the loss finally sustained by the plaintiff in not recovering her said bonds and coupons at the time of such restoration and afterwards was not attributable to the acts or omissions of the defendant in the making such bargain or arrangement, or to the acts or omissions of the defendant in its transactions or the transactions of its officers with said persons last named.

The court refused this request; to which plaintiff's counsel then and there duly excepted. Thereupon plaintiff's counsel re-
184 quested the court to submit to the jury whether the loss finally sustained by the plaintiff in not recovering her said bonds and coupons was not attributable to the acts or omissions of the defendant or its officers subsequent to the robbery aforesaid. The court refused this request; to which plaintiff's counsel then and there duly excepted. The plaintiff admits that so much of the complaint as charges neglect in the keeping is not substantiated unless the mere fact of the robbery is sufficient. The court admits Dr. Wylies' letter to Mr. Warrener on condition that the statements of past facts or claims are not to be taken as evidence that such facts or claims are proven.

The plaintiff having rested her case, the defendant's counsel moved the court to direct the jury to find a verdict for the defendant upon the ground that if the evidence offered by the plaintiff was
185 true, there is nevertheless no adequate nor substantial proof of the allegations of the complaint, and the evidence is too vague in its nature and irrelevant to the allegations of the complaint to go to the jury, while the essential allegations of the complaint (declaration) are affirmatively disproved by plaintiff's witnesses; and on the further ground—

(I.) That the allegations of negligence and fraud are disproved by the unvarying evidence of plaintiff's witnesses to the zeal, fidelity, ability and success of the defendant and its officers and by specific proof that the bank did not give or release Mrs. Wylie's bonds to the thieves.

(II.) And on the further ground that plaintiff has made a failure of proof as to values.

(III.) And on the further ground that the bank did not as a bank make the various undertakings (to recover and compound) set forth in the complaint declaration.

186 IV. And on the further ground that if the undertakings claimed had been made (to undertake the business of the recovery of stolen goods) they were *ultra vires.*

V. And on the further ground that if the defendant's officers had undertaken at plaintiff's request the business of compounding for her with the thieves, as claimed by plaintiffs in the complaint (declaration), it would have been *contra bonos mores* as well as *ultra vires.*

VI. And on the further ground that the plaintiff admits failure of proof as to the charge of negligence in keeping the bonds. And

as to the recovery after the robbery it affirmatively appears that plaintiff and her husband had charge of her suits, criminal prosecutions and negotiations to that end.

The court thereupon instructed the jury to find a verdict
187 for the defendant; to which ruling the plaintiff's counsel then and there duly excepted. The jury, under the direction of the court as aforesaid, returned a verdict for the defendant, and inasmuch as the said several matters do not appear by the record, the plaintiff's counsel requested the judge of said court to allow and sign this bill of exceptions, and the said judge did in pursuance of said request and of the statute in such case made and provided, so allow and sign this Bill of Exceptions containing the several matters aforesaid, this 24th day of January, A. D. 1883, for this october term of said court, A. D. 1882.

(Signed) HOYT H. WHEELER.

(Endorsed:) United States circuit court for the southern
188 district of New York. Fanny D. Wylie *vs.* The Northampton National Bank. Bill of exceptions. Holmes & Adams, solicitors for plaintiff, 35 Wall street, New York. U. S. Circuit court. Filed June 12, 1883. Timothy Griffith, clerk.

189 Supreme Court of the United States of the Term of October, in the year of our Lord one thousand eight hundred and eighty-three.

FANNY D. WYLIE, Plaintiff in Error,

vs.

THE NORTHAMPTON NATIONAL BANK, Defendant in Error.

Afterwards, to wit, on the 8th day of October, in this same term, before the justices of the Supreme Court of the United States at the Capitol at the city of Washington, comes the said Fanny D. Wylie, by Messrs. Holmes & Adams, of New York, her attorneys, and says in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, viz:

That the judge who tried the cause erred in refusing the
190 plaintiff's request to go to the jury on the evidence in general as to whether the loss of the plaintiff's said bonds and coupons was attributable to the negligence of the defendant.

And also that the said judge erred in refusing the request of the plaintiff that the court submit to the jury whether the defendant had not, prior to the recovery by Hinckley of his $25,000 Union Pacific bonds, induced the plaintiff to desist from all negotiations for the recovery of her said bonds and coupons, and to leave all such negotiations to the defendant; and whether the defendant did not represent to the plaintiff that it was then negotiating and would negotiate for the return of all the said stolen property together, as well the plaintiff's as the bank's, and other losers.

And also that the said judge erred in refusing the plaintiff's re-

quest that the court submit to the jury whether the plain-
191 tiff's said bonds and coupons were not part of the lot of \$100,000 or \$75,000 of securities mentioned in the letters of Hinckley and Wiley, above set forth, and whether said Hinckley's \$25,000 Union Pacific bonds were not also a part of this lot, and whether the defendant did not negotiate by the offering of rewards or other consideration for the return of this lot.

And also that the said judge erred in refusing the request of the plaintiff that the court submit to the jury whether the sending of the said lot, or any lot of said stolen securities, or the sending of plaintiff's said stolen bonds and coupons abroad by the thieves, or those then in possession of the same, was not attributable to the acts or omissions of the defendant as negligence.

And also that the said judge erred in refusing the request
192 of the plaintiff that the court submit to the jury whether the defendant at the time of the discharge of Connors, Leary, and Draper from prison without trial, and at the time of the final recovery of the securities and stolen property in 1880, did not enter into some bargain or arrangement with said persons or others not to prosecute said persons last named in consideration of the restoration of said property so as aforesaid returned in 1880, and whether the loss finally sustained by the plaintiff in not recovering her said bonds and coupons at the time of such restoration and afterwards was not attributable to the acts or omissions of the defendant in making such bargain or arrangement, or to the acts or omissions of the defendant in the transactions or the transactions of its officers with said last-named persons.

193 And also that the said judge erred in refusing the plaintiff's request that the court submit to the jury whether the loss finally sustained by the plaintiff in not recovering her said bonds and coupons was not attributable to the acts or omissions of the defendant or its officers subsequent to the robbery aforesaid.

And also that the said judge erred in that he instructed the jury to find a verdict for the defendant.

Also that there is error in this, viz., that by the record aforesaid it appears that the judgment aforesaid was given for the said The Northampton National Bank against the said Fanny D. Wylie, whereas by the law of the land judgment ought to have been given for the said Fanny D. Wylie against the said The Northampton National Bank.

And the said Fanny D. Wylie prays that the judgment
194 aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings, may be reversed, annulled, and altogether holden for naught, and that the said Fanny D. Wylie may be restored to all things which she hath lost by occasion of the said judgment.

(S'g'd) HOLMES & ADAMS,
Attorneys for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Fanny D. Wylie *vs.* The Northampton National Bank. Assignment of errors. Holmes &

Adams, attorneys for pl'ff in error, 35 Wall street, New York.
195 (U. S. circuit court.) Filed Aug. 31, 1883. Timothy Griffith, clerk.

196 Supreme Court of the United States.

FANNY D. WYLIE, Plaintiff in Error,

vs.

THE NORTHAMPTON NATIONAL BANK, Defendant in Error.

And afterwards, to wit, on the 8th day of October, in October term, in the year of our Lord one thousand eight hundred and eighty-three, the said The Northampton National Bank, by Peckham & Tyler, its attorneys, freely came here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid; and it prays that the said Supreme Court of judicature, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid
197 as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

(S'g'd) PECKHAM & TYLER,
Attorneys for Defendant in Error.

(Endorsed:) U. S. Supreme Court. Fanny D. Wylie *vs.* The Northampton National Bank. Joinder in error. Peckham & Tyler, attorneys for defendant in error, 111 Broadway, New York City. U. S. circuit court. Filed Sept. 1, 1883. Timothy Griffith, clerk.

198 Supreme Court of the United States.

FANNY D. WYLIE

vs.

THE NORTHAMPTON NATIONAL BANK.

Know all men by these presents that we, Fanny D. Wylie, W. Gill Wylie, and Henry M. Murphy, of New York, are held and firmly bound unto the Northampton National Bank of Northampton, Massachusetts, in the sum of one thousand dollars, to be paid to the said The Northampton Natonal Bank, its successors and assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.
199 Sealed with our seals. Dated this 14th day of June, A. D. 1883.

Whereas the above-named Fanny D. Wylie hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Fanny D. Wylie shall prosecute her said writ of error to effect, and shall answer all costs and damages if she shall fail to

make good her plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(S'g'd) FANNY D. WYLIE. [L. S.]
(S'g'd) W. GILL WYLIE. [L. S.]
(S'g'd) HENRY M. MURPHY. [L. S.]

Sealed and delivered in presence of—
(S'g'd) T. B. GOODALE.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

200 Fanny D. Wylie, W. Gill Wylie, and Henry M. Murphy, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

(S'g'd) FANNY D. WYLIE.
(S'd'd) W. GILL WYLIE.
(S'g'd) HENRY M. MURPHY.

Sworn to and subscribed before me this 14th day of June, 1883.
[NOTARIAL SEAL.] (S'g'd) T. B. GOODALE,
Notary Public, N. Y. Co.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that on the 14th day of June, 1883, before me personally came Fanny D. Wylie, W. Gill Wylie, and Henry M. Murphy, known to be the individuals described in and who executed the within undertaking, and severally acknowledged that they executed the same.

[NOTARIAL SEAL.] (Signed) T. B. GOODALE,
201 *Notary Public, N. Y. Co.*

(Endorsed:) U. S. Supreme Court. Fanny D. Wylie *vs.* The Northampton National Bank. Supersedeas bond on writ of error to the Supreme Court. Holmes & Adams, att'ys for pl'ff, 35 Wall street, N. Y. city. Bond approved. (S'g'd) A. Brown. U. S. circuit court. Filed June 19, 1883. Timothy Griffith, clerk.

202 UNITED STATES OF AMERICA, *ss:*

To the Northampton National Bank, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-three, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Fanny D. Wylie is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in

the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated New York city, June 19th, 1883.

ADDISON BROWN.

203 [Endorsed:] U. S. Supreme Court. Fanny D. Wylie, plaintiff in error, against The Northampton National Bank, defendant in error. Citation. N. Y. city, June 19th, 1883. Due service of a copy of the within citation is hereby admitted. Peckham & Tyler, defendant's solicitors. [Stamped:] U. S. circuit court. Filed Jun. 19, 1883. Timothy Griffith, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 305. Fanny D. Wylie, plaintiff in error, *vs.* The Northampton National Bank. Filed 26th September, 1883.



119-361

Office Supreme Court U. S.
FILED
APR 13 1886
JAMES H. McKENNEY,
CLERK.

UNITED STATES SUPREME COURT.

FANNY D. WYLIE,
Plaintiff in Error,

vs.

THE NORTHAMPTON NATIONAL BANK,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

GEORGE H. ADAMS,
Of Counsel, etc.

HOLMES & ADAMS,
Attorneys for Plaintiff in Error.

a w c.

United States Supreme Court.

FANNY D. WYLIE,
Plaintiff in Error,

vs.

THE NORTHAMPTON NATIONAL BANK,
Defendant in Error.

Brief of Plaintiff in Error.

This is a writ of error to the Circuit Court for the Southern District of New York. The action was brought in the State Courts of New York, out of which a warrant of attachment issued upon the complaint and affidavits, appearing at pages 2–13 of the Record; the defendant appeared generally and answered in the State Court, and afterwards removed the cause to the Federal Court (pp. 13–23). The pleadings in the State Court were unaltered in the Circuit Court, except that the plaintiff after removal duly filed a replication (p. 23).

The cause was tried before Hon. Hoyt M. Wheeler, Judge, and a jury at a term in January, 1883; at the close of the plaintiff's case the jury, by direction of the Court, found a verdict for the defendant; the plaintiff asked to go to the jury on certain points and questions of fact, which was denied. A bill of exceptions was signed, which

appears at pages 27-54; the errors assigned appear at pages 54 and 55.

The defendant in error is a national bank at Northampton, Massachusetts, doing the ordinary business of a bank, and, for the accommodation of its patrons, but without actual compensation, receiving securities for safe keeping (fol. 101). Prior to and on January 26, 1876, plaintiff in error (then Miss Damon, since become Mrs. Wylie) was a regular depositor in the bank (fols. 102, 103); the bank at the same time kept for her eight coupon mortgage bonds of the Pacific Railroad of Missouri for $1,000 each, maturing 1888, with semi-annual unmatured coupons attached of $30 each (fol. 100).

These bonds the bank had bought for her sometime previous—had paid for out of her deposits, and had continuously kept for her up to the time of loss (fol. 130).

On the night of the 26th and 27th January, 1876, the bank was broken into by burglars, and property consisting chiefly of bonds and stock, with some money, was stolen therefrom, amounting in value to about $1,600,000, including a large amount of property of the bank and the eight bonds of the plaintiff in error (fols. 100, 101).

This action is to recover damages from the bank for the loss of said bonds and coupons, or some of them, on the ground of the negligence of the defendant in error.

The complaint avers:

1. That the bank did not use due care *in keeping said bonds*, and consequently they were exposed to loss and theft (p. 10).

2. That on demand the bank refused to deliver up the bonds, representing that they had been stolen as aforesaid; and in exculpation declaring the facts of the burglary (p. 10).

3. That plaintiff in error never parted with her ownership, but, relying upon the representations aforesaid, in March, 1876, she was about to enter into negotiations and

take measures for the recovery of her bonds from those then in possession of them; that thereupon the bank represented to her that it was about to take measures for the restitution of the stolen property and expected to recover it all in bulk, or the greater part thereof, and that it expected to succeed therein, provided it was allowed to act for her and other losers in the same position; and further represented that the bank was in a better position to negotiate for the restoration of the property, and could do it at less expense, than she and other individual losers acting independently; that thereupon the bank requested her to authorize it to act for her in that respect, and to negotiate for her securities at the same time it negotiated for itself and for others, and also requested her not to undertake negotiations or efforts on her own behalf (p. 11).

4. That relying on these representations she complied with the requests, and ceased all efforts in her own behalf, and permitted the bank to act for her as requested; that the bank did thereupon undertake to act, and negotiated and took certain proceedings, so that sometime in 1879 or 1880 the bank did recover the greater part of the property stolen, about, $1,500,000, including a large amount of the bank's own property (pp. 11 and 12).

5. That the difference between the amount stolen and the amount recovered was, by the bank, allowed and agreed to be retained by the thieves, as a consideration or reward, and that this included the eight bonds and coupons of plaintiff in error; that she was not informed of the proceedings aforesaid; that by the sacrifice of her property and that of some others the bank recovered a large amount of its own property, and has reimbursed itself for the greater part of its losses and for its expenses incurred.

The Answer of defendant in error admits the deposit for safe keeping, and denies the other material allegations; it avers a special agreement that the deposit should be at owner's risk; that the bank was not authorized, nor was any person on its behalf authorized, to make an agree-

ment with plaintiff in error, or an agreement with the holders of the stolen property, such as are set forth in the complaint; and alleges due care in the premises (pp. 13 and 14).

The plaintiff in error afterwards filed a Replication, in which she stated that since the commencement of this action she had recovered, in a replevin suit in the Circuit Court, four of her said bonds from the New York Post Office, where they happened to be found; and she reduced her claim in this action by their value (pp. 23 and 24).

The evidence discloses the following facts :

The burglary took place in January, 1876; some efforts were made by the bank to recover the lost property; a few weeks after the burglary the bank called a meeting of the losers, including depositors for safe keeping ; plaintiff did not attend, and was not represented, at this meeting (fol. 104); at this meeting the directors and officers of the bank were present, and it was proposed to form a committee, composed partly of bank officers and partly of such depositors ; this was finally assented to by the bank's officers, but was voted down, and the matter was left, as before, to the efforts of the bank (fols. 105 and 106).

In 1877, plaintiff in error married Dr. Wylie, of New York, who thereafter acted for her in the matter. In the same year Dr. Wylie was informed, through a patient of his, that he could deal with Scott, one of the burglars, for the recovery of Mrs. Wylie's bonds; he did not at once act upon this, because he understood the bank was acting for his wife. Shortly after this, Dr. Wylie stated this proposition to Warrener, the vice-president and manager of the bank, and stating that he thought he could get back his wife's bonds; Warrener then requested Wylie not to negotiate independently of the bank, and stated that the bank was negotiating to get the securities back. To this request Wylie acceded (fols. 107, 108, 109).

On February 9, 1878, Wylie received from Hinckley, one of the prominent directors of the bank, a letter representing that he was acting for the bank (fol. 110), and enclosing a paper, and requesting the plaintiff to sign it;

Hinckley again wrote, February 27, 1878 (fol. 111), as he says, at the request of Warrener, and Edwards, the president, urging Mrs. Wylie to sign the paper, and saying that they thought the property could be recovered "cheaper in bulk than in detail," and that they had "strong hopes of being able to effect a negotiation at no distant day, and would like to make one clean job of it;" thereupon, on March 21, 1878, Mrs. Wylie and her husband signed the paper as requested, and sent it to the bank; it was as follows:

"NORTHAMPTON, February, 1878.

"We, whose names follow, having suffered the loss of securities by the robbery of the Northampton National Bank in January, 1876, hereby agree to pay a *pro rata* proportion of the expenses incurred in obtaining them and returning them to us."

That this was intended to be an agreement with the bank is shown by Hinckley's letter of February 9, 1878, proposing its execution, where he says: "It has occurred to some of our directors that we have no right to use the funds of the stockholders of the bank for the benefit of the special depositors, losers by the robbery, without some guarantee that they will be repaid."

In October, 1877, Edwards, the president of the bank, was notified by persons acting in behalf of Scott and Dunlap, two of the burglars then under sentence, that $100,000 of the best bonds had been put aside and money borrowed on them, and that they could be had for $8,000; some efforts were made to effect this. To the knowledge of Edwards and the Vice-President Warrener, and upon consultation with them, Hinckley, a director, was allowed, however, to separately negotiate through the same channel for the return of $25,000 U. P. bonds, which were known to belong to him, on payment of $6,000; the evidence showed these $25,000 to be a part of the $100,000 lot; that after the $6,000 was paid, the difficulties of negotiation increased, the persons holding the balance of $75,000 making exorbitant demands; that while a further negotiation for the $75,000 was proceeding Hinckley, though acting as an officer of the bank for all parties concerned, and acting with Edwards and Warrener, again attempted

to make his private bargain for $19,000 more of these $75,000 of bonds; it is a fair inference from the testimony that the bank failed in negotiating for this remaining $75,000, because Hinckley underneath this negotiation, or with it, was trying to make a special arrangement for himself. The evidence is clear on his own admission, that by reason of the acts of the bank and his own acts in these negotiations, the whole $75,000 was sent to Europe and negotiated, or otherwise lost. Hinckley himself writes:

"This I do know, that * * * no part of the $75,000 left the country until some time in 1878, after I refused to pay $10,000 for the balance, $19,000, of my U. P.'s. It was my refusing to pay that sent them abroad. If I had accepted the offer, I have no doubt we could have got the whole $75,000 at 50 per cent. of the market value." (fol. 141.)

It appears that in 1878, six of Wylie's bonds, with others stolen in this robbery, were passed upon bankers and other persons in Frankfort-on-the-Main (fol. 118) by one Lagrave, who was there under an assumed name and pretended that the bonds belonged to an estate, and who disappeared immediately after he sold them; when the coupons from these bonds were presented here in 1879 in reputable hands, Mrs. Wylie received notice from the railroad company and replevied them, which resulted in a search for Lagrave, and his arrest at Cologne in 1879, at the instance of the Frankfort purchasers; a trial of Lagrave, at Frankfort, resulted in his discharge on the ground of want of jurisdiction in its courts, the Frankfort purchasers forced back the stolen bonds again upon Lagrave, who again disappeared (fol. 125) with the bonds.

In Wylie's proceedings in 1879, to recover the coupons presented here, it was for the first time ascertained that the bank had not sent particulars of the robbery abroad further than the fact itself; that it did not cable the numbers or description of the securities stolen, and did not even mail to financial centres, or otherwise give notice of, the particulars of the million and a half of negotiable securities stolen (fol. 173), although it had represented to Dr. Wylie that this had been done.

In 1876 and 1877 indictments were found in Massachu-

setts against Scott and Dunlap, and also against Leary, Conners and Draper for this burglary; Scott and Dunlap were tried and convicted at Northampton; the others had not then been caught. Afterwards Draper was caught and taken to Northampton, and remained there in jail untried about two and a half years. Shortly before the expiration of this two and a half years, in 1880, Conners and Leary were arrested and taken to Northampton jail.

It would seem (fol. 175) that the negotiations at this time between the bank and Scott and Dunlap, then in State prison, and the communication made by the latter to Conners, Leary and Draper, then in jail at Northampton, led to what followed, viz.: Soon after Conners was taken to Northampton the greater part of the stolen property was recovered; Hinckley and Warrener went to New York to a safe deposit company there and brought it away; a little before or a little after this final recovery Conners, Leary and Draper were all discharged at Northampton without trial (fols. 174 and 175).

And in this connection should be considered the paper or papers prepared to petition the Governor of Massachusetts to pardon Scott and Dunlap (fol. 176).

The plaintiff in error claims that because of the relations existing between her and the bank (1) by reason of the deposit for safe keeping. (2) by the representations and requests thereon made to her in 1877 that she should act only through the bank, and (3) by the representations of the bank, and the written agreements of February and March, 1878, delivered to the bank, a duty of a special character devolved upon and was assumed by the defendant; and that the evidence of the acts of the bank, and of its officers done with its knowledge, was sufficient to go to the jury upon the question of its neglect of the duty growing out of these relations.

At the close of the plaintiff's case the defendant, offering no evidence and moving for a verdict, the plaintiff made specific requests to go to the jury; these requests appear at pages 52 and 53 of the Record, and are almost identical with the errors assigned by the plaintiff in error; each of these requests were denied, and the Court directed

a verdict for defendant, to all and each of which plaintiff excepted.

The errors assigned and relied on here are as follows: That the Court erred—

1. In refusing the plaintiff's request to go to the jury on the evidence in general as to whether the loss of plaintiff's said bonds and coupons was attributable to the negligence of defendant.

2. In refusing the request of the plaintiff that the Court submit to the jury whether the defendant had not, prior to the recovery by Hinckley of his $25,000 Union Pacific bonds, induced the plaintiff to desist from all negotiations for the recovery of his said bonds and coupons, and to leave all such negotiations to the defendant; and whether the defendant did not represent to the plaintiff that it was then negotiating and would negotiate for the return of all the said stolen property together, as well the plaintiff's as the bank's and other losers.

3. In refusing the plaintiff's request that the Court submit to the jury whether the plaintiff's said bonds and coupons were not part of the lot of $100,000 or $75,000 of securities mentioned in the letters of Hinckley and Wylie, above set forth; and whether said Hinckley's $25,000 Union Pacific bonds were not also a part of this lot, and whether the defendant did not negotiate by the offering of rewards or other considerations for the return of this lot.

4. In refusing the request of the plaintiff, that the Court submit to the jury whether the sending of the said lot, or any lot of said stolen securities, or the sending of plaintiff's said stolen bonds and coupons abroad by the thieves or those then in possession of the same, was not attributable to the acts or omissions of the defendant as negligence.

5. In refusing the requests of the plaintiff, that the Court submit to the jury whether the defendant, at the time of the discharge of Conners, Leary and Draper from prison, without trial, and at the time of the final recovery of the

securities and stolen property in 1880, did not enter into some bargain or arrangement with said persons or others, not to prosecute said persons last named in consideration of the restoration of said property so as aforesaid returned in 1880, and whether the loss finally sustained by the plaintiff in not recovering her said bonds and coupons, at the time of such restoration and afterwards, was not attributable to the acts or omissions of the defendant in making such bargain or arrangement, or to the acts or omissions of the defendant in the transaction or transactions of its officers with said last named persons.

6. In refusing the plaintiff's request, that the Court submit to the jury, whether the loss finally sustained by the plaintiff in not recovering her said bonds and coupons, was not attributable to the acts or omissions of the defendant or its officers, subsequent to the robbery aforesaid.

7. In that the Court directed the jury to find a verdict for the defendant.

8. In that the judgment should have gone for plaintiff.
(See Assignment of Errors, pages 54 and 55.)

Points of Law and Fact.

I.

The action will lie against a National Bank for negligence, such as that charged in this case.

National Bank *v.* Graham, 100 U. S., 699.
Whitney *v.* Bank, 1 Transcript of Appeals U. S. S. Court, (1880), 263.

The Graham case was against a National Bank, for loss by robbery of bonds kept, without compensation, by the bank for the accommodation of the plaintiff.

Whitney's case was decided on the rulings in Graham's

case; it was an action for negligence for the loss of bonds or securities received by the bank on deposit for safe keeping without compensation, and lost by a robbery of the bank. In the Court below the case had been taken from the jury, on the ground that a National Bank could not receive special deposits, and was not liable for their loss. This Court reversed that ruling, which disposes of similar defenses set up in the answer in this case.

The decision of the Vermont Supreme Court in the Whitney case (50 Vt., 388), rested upon the decision of the same Court in Wiley *v.* Bank of Brattleboro (47 Vt., 546), another case of robbery of a national bank. The opinion in the 47 Vermont Reports was given by Judge Wheeler, who tried this case, but who then was of the Vermont Supreme Court. His opinion was a learned and exhaustive one, and was the law of Vermont until it was overruled by this Court in Whitney's case. The decision of the U. S. Supreme Court in the Whitney case was not specially brought to Judge Wheeler's attention on the trial of this case, and it may be said, with great respect, that the Judge's mind may have been influenced in this case by the rule prevailing in Vermont, which he had himself laid down in the Wiley case.

II.

In the absence of a statement of grounds for the direction of a verdict, it might be presumed that the Court's ruling was based upon one or more of the grounds stated by counsel for defendant on his motion for a direction (folios 185 and 186); but, as none of these grounds, as stated, seem worthy of consideration, it must be presumed that the Court directed a verdict on the general ground that the evidence did not make out a case of negligence which would support a verdict for the plaintiff; this was evidently the ground for denying the plaintiff's claim to go to the jury generally on the whole case. This is the only question in the case, and each exception taken to the

Court's refusal to submit certain questions of fact to the jury is but a specification of error, although if any one of these propositions ought to have gone to the jury a new trial should be granted.

There is no question of contributory negligence on the part of the plaintiff in error, either at the time of the original loss, or afterwards during the negotiations for restitution.

The special defense set up in the answer (fol. 48), that the bonds were left in the bank's vault on the agreement that the bank should in no case be responsible for them, was not proven.

There is no explanation on the part of defendant as to the original loss; it is admitted throughout that Mrs. Wylie's bonds were in the bank at the time of the burglary, and that they were there lost; the complaint alleges want of due care, and that they were exposed to loss and theft by reason of the carelessness of defendant; in the request to go to the jury, the plaintiff disclaims neglect in the keeping, unless the fact of robbery, without other explanation, be sufficient to establish that *prima facie* (fol. 184).

III.

It is chiefly on the ground of negligence of defendant subsequent to the robbery that plaintiff claimed a recovery. Without discussing the question, it may in this Court be assumed to be the rule, that it is error to direct a verdict for the defendant, unless the evidence is such that the Court would feel bound to grant a new trial in case the jury should find a verdict for the plaintiff; to establish error it is not necessary that the Court should "decide that the defendant was negligent." If this Court "thinks there was evidence on which that question should have been left to the jury, * * * it should still be left to the jury" (per Miller, *J.*, in Nat. Bank *v.* City Bank, 103 U. S., 671). This direction can be sustained only "on the

ground that the evidence, with all the inferences that the jury could justifiably draw from it, was insufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside" (per Mathews, *J.*, in Baylis *v.* Travellers' Ins. Co., 113 U. S., 320).

IV.

It was not because of a lack of evidence on the several propositions, that the Court refused to permit the case to go to the jury.

In addition to the foregoing statement of facts, the following testimony is cited in reference to specific propositions contained in the requests [herein marked (*a*), (*b*), (*c*) and (*d*)].

(*a*) That prior to Hinckley's negotiation for and recovery of $25,000 Union Pacific bonds, defendant induced Mrs. Wylie to desist from all efforts for the recovery of her bonds, &c., to leave such negotiations to defendant; and that defendant represented to Mrs. Wylie that it was then negotiating and would negotiate for the restitution of all the stolen property together, that of the plaintiff's, the bank, and all other losers.

In 1877, Dr. Wylie had reason to believe that he could recover plaintiff's bonds through the intervention of a patient who was in a position to influence Scott, then under indictment at Northampton and afterwards convicted; he submitted the proposition to the representative of the bank, Warrener, vice-president, who requested him not to act independently of the bank, stating that the bank was negotiating to get all the securities back; Wylie says this was "in the fall of 1877" (fol. 107), and that he then desisted from efforts in his own behalf.

(As to all this Wylie testifies; no one contradicts him.)

At this very time, "early in October, 1877" (fol. 132) one Bond, acting for Scott and Dunlap, notified Edwards, the bank's president, that Hinckley's $25,000, U. P. bonds,

could be had on payment of $6,000; Edwards and Hinckley took the proposition into consideration; Hinckley paid the $6,000 and received the $25,000 U. P. bonds, and "as it was thought best for all parties, in and out of prison, that I should keep mum about the U. P. transaction," Hinckley locked them up from October until June, 1878, not even collecting the coupons, which had matured for two years.

(All this appears in Hinckley's own letters, written in 1879 (fols. 132–134).

Hinckley testified on the trial, but he did not explain or qualify the statements in his letters; neither Edwards, the president, nor Warrener were called to rebut the inferences to be drawn from all this. Hinckley recognized the predicament of the bank, and attempted to avoid such inferences in a letter written three or four months after the last, by claiming that in getting his $25,000 U. P. bonds he was acting for himself, and that when he consulted Edwards and Warrener, it was "as my friends, and not as bank officers" (fol. 142). But, it is to be observed, that it was while Bond, for Scott and Dunlap, and Edwards, Warrener and Hinckley, for all parties, were negotiating for the "$100,000 of the best of the bonds," and were promised them on payment of $8,000, but in which they were at the time disappointed, that Bond notified Edwards that the $25,000 U. P. bonds would be given up for $6,000; they were offered to Edwards, the president, acting for the bank and all concerned, not to Hinckley as owner; there is nothing to show that Bond knew that Hinckley was owner of these U. P. bonds; "this was such an advance in price from the first proposition," says Hinckley, "that I at first indignantly refused" (fol. 132). What first proposition, except the proposition of returning $100,000 for $8,000? This was a modification of the "first proposition," and an "advance in price" on that proposition; it was intimately connected with it, and was beyond doubt part of the same negotiation; the $25,000 of Hinckley's bonds was itself a portion of the very $100,000 of "best bonds" belonging to several losers, which included, as we shall show also, Mrs. Wylie's bonds. Hinckley says: "*We* concluded that it was better *for all parties* for me to accept the proposition."

No doubt Hinckley got back his bonds for himself and paid the expense, but it is equally beyond doubt that he did it when he was negotiating as a director, with Edwards and Warrener, for the return of the large lot which included Wylie's bonds; and that he did it on the advice of Edwards and Warrener, and at about the very time when Warrener was dissuading Dr. Wylie from using the means Wylie had of approaching Scott in order to get Mrs. Wylie's bonds, and when Warrener was promising that all should be negotiated for together.

(*b.*) That the bonds of plaintiff in error were part of the lot of $100,000 or $75,000 of securities mentioned in Hinckley's letters; and that Hinckley's $25,000 U. P.'s were also part of this lot; and that the defendant did negotiate for the return of this lot.

Reversing the order of these three propositions, the last is established by the evidence referred to last above. Bond, acting for Dunlap and Scott, told Edwards "that D. & S. had, before their arrest, separated $100,000 of the best bonds from the main lot before their arrest, and borrowed money on them; that on payment of $8,000 *we* could get the whole. *We concluded* that it was best to do this;" but the thieves did not stand by their offer as to the whole, but let them have the $25,000 Union Pacific bonds for $6,000; these were known by the bank to belong to Hinckley. There can be no question, from Hinckley's account, that these $25,000 were a part of the $100,000 lot, for he goes right on to tell how they kept negotiating for the remaining $75,000 (see fols. 133 and 134), and his opinion finally that the payment of $6,000 for the $25,000 Union Pacific bonds "encouraged them to drive a hard bargain" as to the rest (137).

There was evidence that Wylie's bonds were part of the lot of $100,000. Hinckley says: "This *I do know*, that I got my bonds in October, 1877, and that no part of the $75,000 [recognizing that as the balance of the lot] left the country until some time in 1878, after I had refused to pay $10,000 for the balance, $19,000, of my U. P.'s. It was my refusing to pay that sent them abroad" (fol. 141); and again he says, at folio 137: "I lost my $19,000 U. P.'s,

which have been negotiated abroad like your (Wylie's) P. R. R'y Missouri bonds."

It was in 1878, this same year, that Wylie's bonds appeared in Europe in the hands of Lagrave; Hinckley says he knows that no part of the $75,000 left this country until 1878, and evidently expresses his information—that all the $75,000 did go abroad. It is a confirmatory circumstance that the bonds which were not restored in 1881 amounted to just about the $75,000 (177).

(*c.*) There was evidence that the sending of the lot of securities abroad by the thieves was attributable to the acts or omissions of the defendant This evidence has already been referred to. Hinckley says (141): "*It was my refusing to pay that sent them abroad. If I had accepted the offer I have no doubt we could have got the whole* $75,000 *at* 50 *per cent. of the market value.*" This refusal was made in the midst of the negotiations for the whole $75,000. Bond "went to New York with instructions to negotiate for the whole $75,000 if he could," and with $5,000 in his hands to pay on account of Hinckley's $19,000 U. P. bonds (fol. 137).

It is clear that Wylie's bonds were still in the hands of the thieves or their friends, in 1878, for an innocent holder would have produced the coupons; they could not be negotiated here owing to the publicity given to the robbery and the particulars of the securities stolen; they could be negotiated abroad for lack of this same publicity, which the bank was bound, but failed, to give; they were actually negotiated there under cover of falsehood and such circumstances as stamped Lagrave as a dishonest holder. If the sending and negotiation of these bonds abroad by the thieves might be attributable to the acts or omissions of the bank, and Hinckley says it was, whether these acts were negligent and brought about the loss of plaintiff's bonds, was not for the judge, but for the jury to decide; it was for them to determine under all the circumstances, and under the engagements and representations made to plaintiff in error, and considering the special knowledge of its officers, whether the acts were those of a prudent and careful man.

(*d.*) There was evidence to go to the jury of an arrangement between the bank and Conners, Leary and Draper, as to the surrender in 1880 of the stolen property. at the time when the latter were discharged without trial, and after a threat was made by Dunlap and Scott that they would testify against them; that it was in consequence of some arrangement that the bank's officers were enabled to go to a safe deposit in New York and get $1,500,000 of securities which had been hidden for four or five years, cannot be doubted; the bank having requested Mrs. Wylie not to negotiate independently, and having requested an agreement on her part that the bank might act for her, and Mrs. Wylie never having negotiated independently or acted in her own behalf, except to take possession of such coupons as turned up in 1879, and the written agreement never having been abrogated, the bank was called upon to show that it had acted prudently, and that, in recovering its own property amounting to a million or more, it did not or could not recover the plaintiffs few thousands, and that its failure so to do was in spite of care and prudence. If defendant claims there is evidence in this record to show such care and prudence, then that evidence should have gone to the jury.

V.

To recapitulate. The relation of the bank towards Mrs. Wylie was not that of a simple depository without reward, as in Graham's and Whitney's cases; it was this, and something more—

1. The bank soon after the robbery held itself out, at a public meeting called by its officers, as acting for all concerned, and it so acted.

2. The plaintiff in error had, or believed she had, an opportunity to get back her own bonds through a channel known only to herself.

3. Nevertheless, defendant dissuaded her from acting independently of the bank and she put herself in defendant's hand as to this; the defendant at the same time made representations as to its own negotiations and more favorable opportunities, and engaged to negotiate for her and itself and all others together.

4. While this understanding or agreement was still subsisting and unchanged, the bank requested the further agreement in writing of March, 1878, and proceeded and acted thereafter in contemplation of that agreement.

5. At the time Warrener was dissuading Mrs. Wylie from acting independently, Edwards, the president, Warrener, the vice-president, and Hinckley, the director, had been together negotiating for the restoration of a certain lot of securities, among which it now appears were Mrs. Wylie's bonds; the thieves were in sore need of money; at this very time, when Wylie was required to keep off, and while the thieves were anxious to trade the whole lot. they allowed a separate bargain to be made for one-fourth of the lot consisting of $25,000 U. P. bonds; these they knew belonged to Hinckley, for "I was the only loser of that particular class of bonds, which was known to Mr. Edwards" (Hinckley's letter, fol. 132). They then agreed that Hinckley should lock these bonds up, as he did, with all the unmatured coupons, and their recovery was concealed for eight or ten months.

6. The payment of the $6,000 prevented (Hinckley says) all further reasonable negotiation for the other $75,000 of the lot.

7. This proceeding, as well as some further negotiations of the bank officers first caused the holders of the bonds to increase their demands unreasonably, but even then the whole lot could have been obtained at 50 per cent. of their value; and this caused the whole lot to be sent abroad, where they were negotiated and lost.

VI.

No point was made on the trial of the statute of limitations set up in the answer.

The statute did not apply under any rule. If the cause of action for negligence arose on the night of the robbery, January 26–27, 1876, the summons was issued and filed on January 26, 1882, and so marked by the initials of the Judge of the State Court (fol. 18); and if the acts of negligence were subsequent to the actual robbery, the statute has no application.

The defendant was a corporation foreign to New York; it could not in New York set up the statute of limitations.

Rathburn *v.* R. R., 50 N. Y., 656.
Bidman *v.* Lake Shore R. R., 84 N. Y., 185.

VII.

The damages claimed and shown amount to more than $5,000.

The damages claimed in the complaint were $10,180, the value of eight bonds, less certain coupons replevied in other hands (fol. 43). The replication admitted the recovery by replevin of four of these bonds after bringing this action; as the bonds were of equal value, this made the balance of damages as claimed one-half of $10,180, or $5,090 (fol. 86).

Dr. Wylie testified that the bonds with all matured coupons cut off, were worth $1,080 each, making for four bonds $4,320 (fol. 180); that of the coupons which had matured on these four bonds *prior to the commencement of this action* there were twenty-eight never recovered; that these were worth $30 each—$840, making the damages at least $5,160 (fol. 179); this action was begun January 26, 1882; coupons matured February and August first each year (fol. 8), and between the commencement of the action and the time of the trial January, 1883, two more coupons had matured on each bond, eight in all, worth $240 more.

VIII.

The judgment should be reversed, and a new trial awarded.

Respectfully submitted,

GEORGE H. ADAMS,
Of Counsel for Plaintiff in Error.

119-361

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CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.—No. 62.

FANNY D. WYLIE,

Plaintiff in Error.

against

THE NORTHAMPTON NATIONAL BANK,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

WILLIAM G. PECKHAM,
ELIPHALET WILLIAMS TYLER,
Of Counsel for Defendant in Error.

United States Supreme Court.

FANNY D. WYLIE, Plaintiff in Error, AGAINST THE NORTHAMPTON NATIONAL BANK, Defendant in Error.	No. 62.

STATEMENT OF FACTS.

As we show later, certain facts alleged in the statement of facts of plaintiff in error are not to be found in the transcript of record.

The plaintiff in error is a *femme couverte* residing in the State of New York. The defendant is a corporation resident in the State of Massachusetts. This action was brought in the Superior Court of the City of New York by attachment according to the State laws of New York as against a foreign corporation. The basis of the action was in a provision of the Code practice of New York. The pleadings were likewise based upon the New York Code of practice, the action and the jurisdiction being both grounded in the provisions of the New York Code. Accordingly, with the particularity required by the New

York Code, the plaintiff, appellant, set forth in the original complaint, the particular grievances alleged to constitute causes of action against the defendant, respondent. These appear on pages 9 and 12 of the Transcript of Record to this Court. The clauses of the complaint are numbered. Clause I. alleges that the defendant is a National Bank. Clause II. alleges that plaintiff, appellant, was the owner of certain bonds and coupons. Clause III. alleges that plaintiff placed said bonds and coupons with the defendant for safe keeping, and that said bonds were not properly cared for by defendant, and that said bonds were stolen, and that defendant "was unable to return said bonds and coupons, and failed and neglected and refused to redeliver said bonds and coupons." Clause IV. alleges the continued ownership of plaintiff, and that plaintiff has never regained possession of said bonds and coupons, and the value of said bonds and coupons. Clause V. alleges that about March, 1876, "the defendant requested the plaintiff to permit and authorize the defendant to act for her and in her behalf" "in negotiations for the recovery of her said bonds and coupons," "and further requested the plaintiff not to undertake negotiations with the persons who had taken said bonds and other property," and that defendant agreed to said proposition. Clause VI. alleges an undertaking on behalf of the plaintiff to negotiate as aforesaid, and "a settlement and compounding with said persons for all claims arising or growing out of such taking or robbery," and a release to the said persons as a consideration or reward for the restoration of what was recovered, and that "among the securities and property so allowed and agreed to be retained and so released by the plaintiff, were the eight bonds of the plaintiff." And that "by the total sacrifice of plaintiff's said property the defendant was enabled to recover and did recover, as aforesaid, a large amount of its own property." The answer denies all the allegations of the complaint except the robbery and the recovery of $1,600,000, and alleges that the deposit of plaintiff's bonds was made with one of defendant's officers and not with the defendant, and on the agreement that the bonds should remain at the risk of the plaintiff, and alleges that the composition with the burglars, which the plaintiff claims

was not undertaken by defendant, and was contrary to good morals and public policy. And that the defendant did use good faith and due care in all the matters mentioned in the complaint, and was guilty of no negligence or breach of trust or fraudulent conduct, and further alleges that prior to the action, plaintiff had in fact recovered one half of the bonds here sued for, and that plaintiff's failure to recover her remaining bonds was caused solely by the negligence and carelessness of the agents employed by plaintiff for that purpose.

A.

The rule is perhaps more stringent under Code practice, that the proof must be *secundum allegata*. But counsel for the plaintiff in error promptly abandoned at trial the terrible charges contained in the complaint, and it will be noticed, by a comparison of the exceptions with the causes of action set forth in the complaint, that the plaintiff desired to go to the jury on other causes of action than those in his pleadings. Such of the pleaded causes of action as had not been abandoned had been affirmatively disproven.

Fol. 155, Mr. Wylie says: "Plaintiff does not now charge the defendant with having actually given her bonds to the thieves." The same was affirmatively disproved by fol. 178. Fol. 103, plaintiff testifies: "She considers the officers of the defendant honorable men and in good repute in their community, and that whenever she has banking business in Northampton she does it to this day, with the defendant. Her only brother, she says, and others of her relatives are regular depositors with defendant to this day." "Five other witnesses of the plaintiff (all who testified) testified that the officers of the defendant were faithful, reputable and diligent men, and that the officers showed zeal, diligence and ability in prosecuting the thieves and recovering the stolen property." Detective Pinkerton, called by plaintiff, testified: "In my experience I never knew a bank that worked as hard to get the thieves and to recover all the property as this bank." The recovery of $1,600,000 by the bank was an unprecedented

success, and of itself proves zeal and faithfulness. The witnesses, the plaintiff and her husband were equally unanimous that there was no case against the bank. The only dissentient was the counsel.

B.

Such terrible charges require attention nevertheless.

The plaintiff's bonds were purchased for her by the defendant, not out of any deposit of hers, nor as a matter of business. The plaintiff's bonds were stolen in 1876 by burglars while said bonds were in defendant's vaults "as a favor to plaintiff without profit or compensation for the keeping" (fol. 101). Before the robbery and before and since this suit, the relations of plaintiff and defendant have all been of that same nature. While at one time there was a writing as to sharing in the expenses of some enterprise, which appears to have been abandoned and on which certainly nothing was ever paid, and as to which, apparently, nothing was ever done, yet the following citations of the evidence show that the relations of the bank and its officers to Mrs. Wylie, in the matter of the attempts to recover her bonds, were those of friends and advisers.

Plaintiff's husband acted for her in all the matters, and plaintiff also had her own independent counsel and other agents acting for her in various parts of the United States, and also at Frankfort-on-Main and Paris. Nearly every counsel brought one or more independent suits for her relating to these bonds and their coupons at different points in this country and in Europe. Page 4 of plaintiff's points states "the matter was left as before, *i. e.*, before the directors' meeting, to the efforts of the bank." The citation given from the record reads simply "left as before," and not "left, as before, to the bank." Until her husband and counsel took charge for her Mrs. Wylie refused to go to the depositors' meetings, and neglected to have any communication with the bank. On a replevin suit, brought prior to this suit, plaintiff recovered from a third party four of the bonds here sued on. She received the four bonds in replevin prior to this suit. Plaintiff

also sued the following parties for coupons of these Missouri Pacific bonds, namely, Speyers & Co., The First National Bank of New York, The Missouri Pacific Railroad (the makers of the bonds), Knauth, Nachod & Kuhne and the Seligmans. From the Speyers she recovered about one thousand dollars. In all the other cases, except the Seligman case, she has recovered. These independent suits of plaintiff are in addition to plaintiff's independent suits at Frankfort and in France. Plaintiff also recovered twenty-two hundred dollars of her Connecticut River stock, stolen in the same robbery. Mrs. Wylie wrote (p. 32, fols. 116–117) that she had got an injunction against the payment of some of her coupons, and that "we expect soon to bring suit to recover the money," and that she desires some of the "printed circulars of the stolen securities" (fol. 152, p. 43). The plaintiff's counsel asks as a favor that the bank give Mrs. Wylie information to help her in her proceedings to recover her bonds. Page 47 Mr. Wylie writes that he had served certain notices of the robbery. It appears that, while the bank "advised" the plaintiff not to do anything outside of the bank, plaintiff nevertheless had, from about the time of the robbery, taken all these various proceedings to recover the bonds herself. On p. 48, fol. 169, Mr. Wylie tells of the extent of his individual proceedings, and says: "If others interested would come into the case I would be very glad, of course."

(Fol. 106.) "Some of the losers worked alone for the recovery of their property, others negotiated or prosecuted by their own method and also in connection with the bank's agents." Other losers of the bonds who were called by the plaintiff testified to no such undertaking as claimed by plaintiff, and all of them testified entirely in the defendant's favor. As to the signed agreement, the witness, at whose request it was signed, testifies (fol. 142): "The bank had nothing to do with it." "None of the directors or the cashier knew anything about it." "As to the position of the bank (fol. 143) with regard to yourself I have no authority to speak."

C.

The first time that the management of Wylie's interest is suggested to the bank directly was when Mr. Wylie wrote, as appears, p. 44, fol. 156. On the next page is the answer of the bank, that the bank has no objection to the losers by the robbery taking any steps they deem proper in their own behalf. This was in answer to a suggestion of Mr. Wylie, that Mrs. Wylie desired to act for herself. In 1877 Mr. Wylie had a "supposition" that the bank was acting for his wife (fol. 104). He does not claim to have had any knowledge or assurance from the bank that such was the fact. Several bank officers urged Mr. Wylie that it would be unfair and unadvisable for him to act independently of the others, but, nevertheless, the Wylies always did act independently, and did precisely as they pleased (fol. 108). Mr. Wylie says one of the bank's officers asked him not to offer a reward, that "it would be unfair to the other losers," but said, "that the losers could take any course that they wished, the bank would not object." Wylie acceded. But in the same folio it appears that Wylie did offer a reward (fol. 113). Dr. Wylie writes that it was only "the sense of the propriety of all working together" which kept him "from trying to get the bonds by his own efforts." As the Wylies took no part in the meeting of the depositors in 1876, the first understanding between the plaintiff and any of the bank's officers was a conversation with Warriner in the fall of 1877 (fol. 108), when Warriner "advised" against independent action. The next dealing in evidence was the the negotiation between Mr. Hinckley and plaintiff in February, 1878, when Mr. Hinckley, plaintiff's witness, says, that he acted for himself only, and not for the bank. Here and there it appears in the record that even the agreement with Hinckley, to pay a share of expenses and losses was to have only a temporary force, and was to refer to one only of the many negotiations, and was not to be a general, permanent agreement. Clearly both sides had abandoned that procedure, and had proceeded on many diverse paths long before the large recovery, which

was made over three years later (fol. 177). The circumstances leading up to that written agreement with Hinckley (fol. 114) is a letter from Wylie to Hinckley, as to an individual, asking Hinckley for personal information, as a favor, and the language of the letters negatives positively the idea that Wylie then claimed to be making an agreement binding on the bank. Wylie's letter of March 2, 1878, speaks of the losers acting as a body, and not as having the bank or anybody else as their collective or authoritative representative. Plaintiff's universal litigations had been proceeding all over the world before the large recovery.

Finally (fol. 164), Mr. Wylie says that his reason for not taking certain steps in 1877 was "advice of the bank" (not any undertaking or contract of the bank), and his own opinion that "it was not exactly fair for him."

It was a friendly understanding only that was between the bank and plaintiff during most or all of the years from 1876 to 1881, and in most of the many enterprises and negotiations, not any formal undertaking.

D.

If plaintiff had pleaded negligence as to sending notices to Frankfort and as to the matter of Hinckley's recovery, on which she now relies (instead of the terrible charges in the complaint, which she must substantiate or fail of a recovery), and if the bank were, in 1881, liable in privity of contract to the plaintiff, still the bank was not guilty of any negligence in regard even to these matters outside of the pleadings.

I.—Neither the bank nor the bank officers, nor the other owners of the class of bonds to which the plaintiff's bonds belonged were ever able to recover any such bonds (fol. 161), except the four of plaintiff's bonds, which accidentally were recovered through the post office in plaintiff's independent suit. As none of the losers were able to recover such bonds, it would appear that the easy negotiability of such bonds made recovery an impossibility. Twenty-six thousand dollars of the eighty thousand which

have never been recovered belonged to Hinckley, and much of the balance of the eighty thousand dollars belonged to officers of the bank and their families, and was not recoved because it was in negotiable securities.

The recovery of Mr. Hinckley's bonds, in connection with which the plaintiff now claims to have been damaged (fol. 191), had already occurred in October, 1877 (fol. 114). This is a vital point as regards the whole of the plaintiff's present position, for the writing which Hinckley obtained from Wylie (in response to Wylie's letter to Hinckley) was not until the following year. In other words, plaintiff in error claims damages for a transaction in 1877 on the foundation of an alleged agreement made in 1878. Hinckley's loss and recovery was of property belonging to himself individually, or as trustee for trust estates. For what Hinckley did to recover such property the plaintiff in error now seeks to make the bank responsible, all else failing.

Schottenfels testifies (fol. 124) that he bought six of the plaintiff's bonds (here sued for) at Frankfort in 1878. It is clear that plaintiff's bonds were already abroad before the agreement with Hinckley. All parties knew that the only person carrying on suits abroad was Mrs. Wylie. It was never mentioned that anybody else should or could carry on litigation for Mrs. Wylie in Europe in place of herself and her own suits pending there.

II.—The afterthought of the failure of notice at Frankfort is frivolous. The sworn allegations of plaintiff in her suit against Speyers were admitted as a correct statement by the plaintiff and put in evidence (fol. 119). Thus it appeared by plaintiff's proofs that soon after the burglary a particular description of all the securities stolen was "advertised in the public papers and otherwise extensively in this country, and a description was extensively circulated in all the principal cities and banks in this country and Europe." "Second: Mrs. Wylie, soon after the burglary, duly notified said Missouri Pacific Railroad of the ownership of said bonds and coupons and of said burglary." "Third: That said burglary was one of the most notorious for years." "That a particular description of all the securities, including those abovementioned (the same as those

here in suit) was advertised in public print and by circulars distributed in the principal cities and banking houses in this country and Europe." "The judgment roll in said suit of this plaintiff against Speyers *et al.*, further shows that the Court found, on motion of the plaintiff in error's present attorneys, that due diligence had been usen in notifying the railroad company, which was the maker of the bonds, and all the banks in Europe, including Speyers & Company and other banks at Frankfort, of the loss of said bonds" (fol. 121). Plaintiff testifies (top of page 34) that she made the statement as to what had been done in the way of notices and advertising on the faith of what her present counsel and her husband told her.

It appears here and there in the record that the Wylies did their own advertising. That the bank used much zeal in sending out notices and advertisements, appears from the fact of Pinkerton's approval, and that not only Kiernan's Agency and Sampson sent notices abroad, but many other methods were taken of advertising the losses abroad (fol. 173), and the methods taken resulted in a recovery, successful beyond all precedent (fol. 147.) Mr. Wylie writes: "Mrs. Wylie's bonds were advertised abroad." "Formal notices were sent to all the banks and exchanges and notices put in at least one paper of each country."

At that very late day Mr. Wylie found no fault whatever with the bank, and hints at no claim against the bank and says, "It is more than probable that these six bonds of Mrs. Wylie were also forced back on account of the steps I took."

E.

If there were any negligence bearing on matters at Frankfort, clearly Mr. Wylie was right in saying that it was from what he did or failed to do, and from the negligence of the plaintiff and her agents, at Frankfort, who having the bonds there allowed them to slip through their fingers. The defendant was not represented at Frankfort. Counsel's suggestion that Mrs. Wylie's bonds were in the $75,000 which Hinckley at one time failed to recover (and most of which were later recovered) is pure imagination.

F.

The endorsement placed on Mrs. Wylie's bonds when she left them in the bank appears (fol. 154, Exhibit 24), certifying that the bonds were a special deposit "entirely at the depositor's own risk, the Northampton National Bank being in no way responsible for them." "Plaintiff's bonds were kept as a favor," etc. (fol. 101).

G.

As counsel still insists, in opposition to his clients that there was a bargain with the thieves, the following additional extracts from the evidence are pertinent (fol. 178). "The bank's officers made no such agreement with the thieves or any other person as that mentioned in the complaint." The thieves were not let loose (fol. 174). One thief has died in prison and the other is still in prison. Counsel mentions the release by the Court on motion of the Attorney General of certain other parties. This is a defective *inuendo*, not evidence. Besides, plaintiff and her husband testified that they "do not charge that defendant gave the bonds to the thieves" (fol. 155).

The final recoveries were not made by or through Hinckley nor through any of the methods contemplated in the correspondence between Hinckley and Wylie (fol. 178), three years before in 1878, nor by any possibility dreamed of at that time.

H.

Counsel quotes Mr. Wylie's letters as evidence for plaintiff of the statements of past facts therein contained. The Court did not receive them as such, and of course they should not be so received.

BRIEF.

I.

In the Graham case, this Court held significantly, "We do not mean to say it, the bank, could convert itself into a pawnbroker's shop." The defendant in error submits that the agreement procured by Hinckley was not an agreement binding on the bank for the undertaking of the business of the attorney, the police and the detective, unless at least it were ratified by the Board of Directors as a board. The newer authorities which enlarge the responsibilities of national banks yet hardly apply to such negotiations with thieves on the part of national banks (as on behalf of a person not a depositor), as are pleaded in this complaint.

II.

We think this the more true because Hinckley's position, his knowledge and his action was similar to that of the man mentioned in the following citation: Atlantic State Bank *v.* Severy, 82 N. Y., at p. 307: "If the knowledge of a director is acquired in his official capacity the bank is presumed to have it; but if it is acquired as any private person might acquire it the bank is not chargeable. Leonard comes within the latter condition. The information which he had was not committed to him as a director, nor did he acquire it while engaged in its business. It did not belong to the plaintiff, and there can be no presumption that it was communicated to it. In behalf of the bank he did not act concerning the note or its purchase."

Alleghany C. W. *v.* Morse, 95 Penn., 408.
E. H. R. R. Co. *v.* Eastern Co., 21 L. J. (N. S.) 23.
Chem. Bk. *v.* Kohner, 8 Daly, 532.
Angel and Ames on Corps., § 309.
Bright *v.* The N. C. Assn., 33 La. Ann., 58.

While the later decisions make a bank liable for many acts of the cashier or president, or other executive officials, yet the rule is still to some extent observed that the acts should be within the scope of the general and customary authority of such officers. And it has not been held that a mere director has such executive power or such capacity to bind a bank, whether inside or outside of the bank's usual business. Directors usually have no function to perform for the bank, except to meet as a board, and as a board to ratify or disaffirm acts or propositions of the executive officials.

III.

On page 10 of the brief for the plaintiff in error, in the second point at the bottom of page 10, we read, "It must be presumed that the Court directed a verdict on the general ground that the evidence did not make out a case of negligence which would support a verdict for the plaintiff." This is the fact, except that the Court said that if a case of negligence had been made out it would still be necessary to consider the point that the plaintiff should have pleaded the two trifling matters of alleged negligence on which alone, at the end of the trial, recovery was claimed. This robbery differs from all others in that the bank officers did better than any other bank officers ever did. They showed more zeal and ability and had greater success. They got all the bonds back that were recoverable and punished the thieves. They deserve the commendation which Mr. Wylie gave them in his first letter after learning of the large recovery. It required five years of persevering labor to recover the $1,600,000, which was recovered.

IV.

Counsel having admitted that the bank was guilty of no negligence in the keeping, unless the mere robbery was proof of negligence, it is clear that on this branch also the plaintiff has no case. From the Essex Bank case, 17 Mass., 479, it has always been held to be law as laid down by this Court in McLemore *v.* The Louisiana Bank, 91 U. S., 186, that where the thing deposited is taken by superior force, the depositary is relieved, unless gross negligence is shown. And in the case of a gratis deposit proof of gross negligence was required to be proven affirmatively, even in the Graham case, cited by plaintiff in error (100 U. S., 699), and cases there mentioned by Justice Swayne, Claflin *v.* Meyer, 75 N. Y., 260 (at p. 266): "When we say there is no evidence to go to the jury we do not mean literally none, but there is none that ought to satisfy a jury that *the fact sought to be proved* is established."

First Nat. Bk. *v.* Ocean Bk., 60 N. Y., 278.

Plaintiff had to prove gross negligence affirmatively to be entitled to go to the jury. The bank was a gratis bailee, granting all plaintiff's claims, in all matters, both before and after the robbery.

V.

The only time, according to the record, when it is clear that those bonds could have been recovered was when the bonds were in Frankfort and at Paris, and the Wylies and their counsel were in Frankfort and at Paris. More or less advertising and more or less of Mr. Hinckley could not help or harm on those occasions. It all lay with the plaintiff's personal counsel and agents. They let the bonds slip, not we. All the while it should be remembered that the Wylies always express entire satisfaction with the advertising, and with whatever else the bank did, and that the bank could no more control Mr. Hinckley

in his private business or in his transactions as trustee for widows and orphans' trust funds, than it could control any stranger.

VI.

Besides the fact that the bank was specially relieved of liability for the loss of this special deposit (by the endorsement on the envelope), the general law is to the same effect.

Matter of the Franklin Bank, 1 Page Chancery, Chancellor Walworth: "A special deposit in a bank for safe keeping is at the risk of the depositor. If the same is stolen, lost or destroyed without any fault on the part of the officers of the bank, he must sustain the loss."

VII.

One portion of the strange complaint was for an alleged conversion. There could be no conversion by us of bonds previously taken by others, and the evidence of value was defective in trover, because the only proof of value was of a value six years after the alleged conversion. The serious gravamen of the complaint was an allegation of an agreement to compound a felony. That had to be abandoned because the evidence contradicted it, and because it would be *contra bonos mores*, and impossible for the Court to hear.

VIII.

We have reasoned on the case finally claimed at trial, for plaintiff in error, so as to end the matter forever.

None the less, so far as this case is concerned, the plaintiff could only recover in this case by substantiating this fraud alleged as the gist of this action.

N. Y. Code, § 549. "Where the action is brought for either of the following causes * * to recover damages for injury to property" "2 * * fraud or deceit * * or to recover property or damages where it is alleged in the complaint that the money was received or the property was embezzled or fraudulently misapplied by an officer or agent of a corporation or banking association, &c. Where such allegation is made the plaintiff cannot recover unless he proves the same on the trial of the action." "4. * * where it is alleged in the complaint the defendant was guilty of fraud in contracting or incurring the liability, the plaintiff cannot recover, unless he proves fraud on the trial of the action."

The following cases maintain the same rule as regards all classes of actions as a general rule of practice independently of the Code: Dudley *v.* Scranton, 57 N. Y., 424; Parker *v.* R. & S. R. R., 16 Barb., 316; Delavan *v.* Simonson, 35 Superior Court (Jones & Spencer), 243; Ross *v.* Mather, 51 N. Y., 108.

It is contrary to all law and fair dealing to allow a recovery on a triviality while pleadings are exhibited as containing the causes of action which charge torts amounting to crimes. An apparent recovery may not be had, as upon the pleadings where such charges are made,—unless the charges made are in effect the charges proved.

We respectfully submit that the judgment should be affirmed.

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